

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



# 75-1154

B  
P/S

ORIGINIAL

In The

## United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

HOWARD FINKELSTEIN, a/k/a ROBERT HOWARD,  
ANTHONY SCARDINO, ALAN SEGAL and EDWARD  
ZUBER,

Appellants.

*On Appeal from the United States District Court for the  
Southern District of New York*

### JOINT APPENDIX

Volume V, pp. JA1251 - End

#### KIRSCHNER & GREENBERG

Attorneys for Appellant,  
Edward Zuber

10850 Wilshire Boulevard  
Los Angeles, California 90024  
(213) 479-6555

#### ANDERSON RUSSELL KILL & OICK, P.C.

Attorneys for Appellant,  
Alan Segal

630 Fifth Avenue  
New York, New York 10020  
(212) 397-9700

#### PAUL J. CURRAN

United States Attorney for the  
Southern District of New York  
Attorney for Appellee

1 St. Andrews Place  
New York, New York 10007  
(212) 791-0074

#### IRVING L. WEINBERGER

Attorney for Appellant,  
Howard Finkelstein a/k/a Robert Howard

770 Lexington Avenue  
New York, New York 10021  
(212) 371-5370

#### ELEANOR JACKSON PIEL

Attorney for Appellant,  
Anthony Scardino

36 East 44th Street  
New York, New York 10036  
(212) 682-8288

(8485)

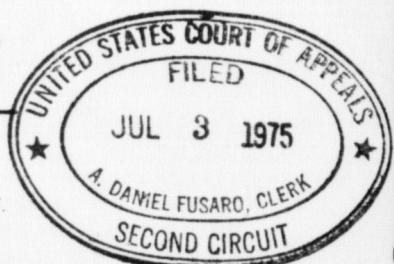
LUTZ APPELLATE PRINTERS, INC.  
Law and Financial Printing

South River, N.J.  
(201) 257-6850

New York, N.Y.  
(212) 563-2121

Philadelphia, Pa.  
(215) 563-5587

Washington, D.C.  
(201) 783-7288



**PAGINATION AS IN ORIGINAL COPY**

## TABLE OF CONTENTS

	Page
Docket Entries .....	JA1
Indictment (Filed September 24, 1974) ..	JA8
Motion By Defendant Edward Zuber to Strike Surplusage in the Indictment and Memorandum of Points in Support Thereof (Filed November 12, 1974) ..	JA23
Motion By Defendant Edward Zuber to Dismiss Indictment For Lack of Speedy Prosecution and Memorandum of Points in Support Thereof (Filed November 12, 1974) .....	JA29
Affidavit of Richard H. Kirschner in Support of Said Motion (Dated November 10, 1974) .....	JA47
Affidavit of Edward Zuber in Support of Said Motion (Dated November 10, 1974) .	JA49
Transcript of Proceedings Before MacMahon, D.J. on October 11, 1974 (Hearing) .....	JA50
Transcript of Proceedings Before MacMahon, D.J. on October 18, 1974 ..	JA85
Transcript of Proceedings Before MacMahon, D.J. on November 27, 1974 ..	JA114

## Contents

	Page
Transcript of Proceedings Before Mac-Mahon, D.J. on December 2, 1974 . . .	JA135
Transcript of Proceedings Before Mac-Mahon, D.J. on December 3, 1974 . .	JA251
Transcript of Proceedings Before Mac-Mahon, D.J. on December 4, 1974 . .	JA455
Transcript of Proceedings Before Mac-Mahon, D.J. on December 5, 1974 . .	JA666
Transcript of Proceedings Before Mac-Mahon, D.J., on December 6, 1974 . . .	JA869
Transcript of Proceedings Before Mac-Mahon, D.J., on December 9, 1974 . .	JA982
Transcript of Proceedings Before Mac-Mahon, D.J., on December 10, 1974 . .	JA1169
Transcript of Proceedings Before Mac-Mahon, D.J., on December 11, 1974 . .	JA1290
Transcript of Proceedings Before Mac-Mahon, D.J., on December 12, 1974 . .	JA1481
Transcript of Proceedings Before Mac-Mahon, D.J., on December 13, 1974 . .	JA1524
Government's Exhibit 1-K — Stock Certificate . . . . .	JA1528

## Contents

	Page
Government's Exhibit 1-P — Stock Cer-	
tificate . . . . .	JA1530
Government's Exhibit 61A — Miscellan-	
eous Document . . . . .	JA1532
Government's Exhibit 61B — Miscellan-	
eous Documents . . . . .	JA1533
Government's Exhibit 61C — Miscellan-	
eous Documents . . . . .	JA1535
Government's Exhibit 148 — Chart . . .	JA1537
Government's Exhibit 147 — Chart . . .	JA1538
Government's Exhibit 151A — Chart . .	JA1539
Government's Exhibit 151B — Chart . .	JA1540
Government's Exhibit 151C — Chart . .	JA1541
Government's Exhibit 63A — Coats and	
Amount of Bill . . . . .	JA1542
Government's Exhibit 63B — Coats and	
Amount of Bills . . . . .	JA1543
Government's Exhibit 131 — Order of Con-	
Ion, J. in People v. Segal, et al . . .	JA1544
Motion by Defendant Edward Zuber For	
Judgment of Acquittal or For New Trial	
and Points in Support thereof . . . . .	JA1561
Requests to Charge in Behalf of Defend-	
ant Scardino . . . . .	JA1572

## Contents

	Page
Requests to Charge in Behalf of Defendant Zuber . . . . .	JA1573
Requests to Charge in Behalf of Defendant Segal . . . . .	JA1603

## WITNESSES

## Burney Aeton:

Direct . . . . .	JA201, JA252
Cross . . . . .	JA303, JA378

## Ronald R. Brookins:

Direct . . . . .	JA362
Cross . . . . .	JA374

## Stuart Schiffman:

Direct . . . . .	JA419
Cross . . . . .	JA445, JA460
Redirect . . . . .	JA475

## John Parker:

Direct . . . . .	JA480
Cross . . . . .	JA489
Redirect . . . . .	JA501, JA505
Recross . . . . .	JA504, JA506

## Joseph Azzerone:

Direct . . . . .	JA507
Cross . . . . .	JA527
Redirect . . . . .	JA535

## Contents

	Page
<b>Michael W. Clegg:</b>	
Direct .....	JA537
Cross .....	JA603
Redirect .....	JA526
<b>Alan Dertinger:</b>	
Direct .....	JA669
<b>Ben Cohen:</b>	
Direct .....	JA675
Cross .....	JA678
<b>S. Zarchary Swidler:</b>	
Direct .....	JA680
Cross .....	JA690
<b>Francine Zahl:</b>	
Direct .....	JA693
Cross .....	JA710
<b>Dwain Knigge:</b>	
Direct .....	JA714
Cross .....	JA725
<b>George T. Parris:</b>	
Direct .....	JA728
Cross .....	JA746
Redirect .....	JA759

## Contents

	Page
<b>Sol Fingar:</b>	
Direct .....	JA764
Cross .....	JA770
<b>John Chetirko:</b>	
Direct .....	JA775
<b>Michael Gardner:</b>	
Direct .....	JA778
Cross .....	JA804
Redirect .....	JA836, JA840
Recross .....	JA839, JA840
<b>Robert Meyer:</b>	
Direct .....	JA842, JA869
Cross .....	JA872
<b>Robert Kelliher:</b>	
Direct .....	JA876
Cross .....	JA885
Redirect .....	JA887
<b>Dennis Colligan:</b>	
Direct .....	JA891
Cross .....	JA900
<b>Robert W. Tobias:</b>	
Direct .....	JA904

## Contents

	Page
<b>Allen Grant:</b>	
Direct .....	JA911
Cross .....	JA930
<b>William Don Shepherd:</b>	
Direct .....	JA941
<b>Gus Michael Kostos:</b>	
Direct .....	JA946
Cross .....	JA972
<b>Howard Nerenberg:</b>	
Direct .....	JA958
<b>Daniel Aymes:</b>	
Direct .....	JA963
Cross .....	JA968
<b>Stephen Oestreich:</b>	
Direct .....	JA998
<b>Robert W. Thomas:</b>	
Direct .....	JA1003
Cross .....	JA1009
<b>Herman M. Solomon:</b>	
Direct .....	JA1010
Cross .....	JA1019
Redirect .....	JA1019

## Contents

	Page
<b>Stanley Schlager:</b>	
Direct	JA1026
Cross	JA1029
Redirect	JA1032
<b>Michael Kargunkel:</b>	
Direct	JA1033
Cross	JA1060
<b>Joseph A. Kelly:</b>	
Direct	JA1082
<b>John R. Steinert:</b>	
Direct	JA1097
Cross	JA1112
<b>Michael G. Grimes:</b>	
Direct	JA1139
Cross	JA1147
<b>Myron Butram:</b>	
Direct	JA1148
Cross	JA1163

1 except where the money was."

2 And that is completely consistent with Mr.  
3 Zuber's role in this situation, which was to go down and  
4 collect some money and some stock from Mr. McKibbon, who  
5 was stealing.

6 All right. That is Mr. Clegg.

7 Hence, in this case the Government again must  
8 prove that Mr. Zuber supposedly had this guilty knowledge.

9 Ladies and gentlemen of the jury, there is not  
10 a single piece of testimony to prove that Mr. Zuber knew  
11 anything about a stock manipulation, not a single witness  
12 testified that they had a conversation with Mr. Zuber wherein  
13 a stock manipulation or this stock manipulation was dis-  
14 cussed, or the reasons why the McKibbon stock was not  
15 supposed to be sold.

16 With respect to that, I would like to get into  
17 Mr. Grant. Remember the Grant transaction. He was  
18 the furrier.

19 Now, my client, who the prosecution claims is  
20 a sophisticated stock swindler and had knowledge of these  
21 things, meets Mr. Grant. All right? And apparently  
22 this meeting is arranged through Mr. Gardner. Mr. Gardner  
23 has a conversation with Mr. Finkelstein. Finkelstein  
24 says he wants to buy a coat, and then Mr. Zuber and  
25 Finkelstein go over to Mr. Grant's place. All right?

2 So the prosecution says that my man, supposedly  
3 this conniving stock swindler, goes over with Mr. Acton  
4 and he arranges for Mr. Acton to transfer 6900 shares of  
5 Pioneer stock, absolutely true. All right?

6 Mr. Grant calls up his broker, finds out that  
7 the stock is selling for about \$6 a share. Right?  
8 And then what happens?

9 Then Mr. Zuber works out this terrific deal where-  
10 by he trades \$42,000 worth of stock for \$15,000 worth of  
11 coats. That's tremendous. That shows that he is a  
12 real sophisticated individual.

13 It shows just the contrary. It shows that  
14 Mr. Zuber didn't know what was going on.

15 Now, Mr. Grant admitted that the reason that he  
16 marked the coats up so high from 15,000 to 42,000 -- you  
17 remember that conversation about how this was 200 per cent  
18 that he normally did -- was because Mr. Grant knew that  
19 Pioneer stock was speculative.

20 As a matter of fact, Mr. Grant admitted that he  
21 was gambling with that stock when he purchased it.

22 All right. Now, I am sure that Mr. Walker is  
23 going to argue to you later that Mr. Zuber made misrepresent-  
24 ations at the time that this stock was transferred, and  
25 let's see what that testimony is all about.

2 "Q Was anything said by Mr. Zuber concerning  
3 the company at that time?"

4 Referring to this January 10th meeting.

5 "A He said the company was going to make a  
6 lot of money and he expected the stock to go very high  
7 and that is the reason he asked me to give him this  
8 paper saying he would buy back in 60 days at \$10 a  
9 share," which should be "buy the stock back in 60 days  
10 at \$10 a share."

11 All right, what Mr. Zuber told Mr. Grant was  
12 that the stock was valuable and that it was going to go  
13 up. Okay? That is what everybody thought at this  
14 time.

15 Mr. Acton and Mr. Clegg both said at this partic-  
16 ular point in time that they had this mine and there was  
17 the economic assay or the economic feasibility study, and  
18 assay reports of what was there, and mercury was selling  
19 for a lot, and these people really did believe in this  
20 mine.

21 The Government's own witnesses testified that  
22 they felt that this was going to be a big venture, and if  
23 this mine clicked, I submit to you that nobody would be  
24 hurt today, because if this mine clicked, the stock would  
25 have been worth a lot of money.

2           All Mr. Zuber was telling Mr. Grant was that  
3       the price of the stock was going to go up.   The reason  
4       that it was going to go up up was because of the mine.  
5       All right?   And the mine had great potential.   Nothing.  
6       to indicate that Mr. Zuber knew that that wasn't the case.  
7       He had gotten all of his information from Mr. Acton and  
8       Mr. Clegg who testified on the stand.

9           All right?

10          Now, with respect to the mine and its operation,  
11       this question was asked -- first of all, Mr. Walker said,  
12       "Did Mr. Zuber tell you that the mine was not in operation?"  
13          The mine was not in operation.

14          Mr. Grant said, "No, he didn't tell me that the  
15       mine was not in operation."

16          And this question was asked of Mr. Grant on  
17       cross-examination.   I think you could tell where Mr.  
18       Grant's head was at this time.

19          Q        Didn't they tell you they were waiting  
20       for some equipment before it became operable?"

21          Talk about the mine now.

22          A        I don't know if they told me.   Somebody  
23       told me that.   I don't remember whom.

24          Q        In fact, didn't Mr. Zuber say they were  
25       waiting for a piece of equipment that they needed to

2 get the mine into commercial operation?

3 "A I don't remember, sir.

4 "Q But someone there had told you that they  
5 were waiting for a piece of equipment, to get the  
6 mine in operation?

7 "A Someone told me. I don't remember whom."

8 So before Mr. Grant bought this stock, he was  
9 told that the mine was not in operation and that they were  
10 waiting for a piece of equipment. He admitted to it on  
11 cross-examination. He wasn't misled, I submit to you.

12 Now, what about the option? I am sure that  
13 Mr. Walker is going to tell you that the reason that Mr.  
14 Zuber asked for this option was because Mr. Zuber wanted to  
15 keep the stock off the market and that from that fact you  
16 are supposed to jump to the conclusion that he knew there  
17 was a stock manipulation.

18 Let's look at this particular option. What  
19 was it? It was a right that was given to Mr. Zuber to  
20 buy the stock back at 10. All right?

21 Mr. Zuber thought the stock was going to go  
22 higher than that, so he told Mr. Grant that was the reason  
23 he asked for the option. All right?

24 Now, I submit to you that if Mr. Zuber wanted to  
25 keep the stock off the market -- by the way, this option

2 didn't cost Mr. Zuber anything. It was the way he could  
3 make some money off the stock if the stock went up. If  
4 Mr. Zuber wanted to keep the stock off the market -- and  
5 it wasn't even Mr. Zuber's stock; it was Mr. Acton's  
6 stock -- but if he wanted to keep the stock off the market,  
7 what he would have done is he would have taken the stock  
8 and he would have pledged it for a loan. He could have  
9 told Mr. Acton, "Pledge the stock for a loan. That will  
10 keep it off the market for six months to a year," instead  
11 of this 60-day business.

12 And that's his testimony; that's what some  
13 other people had done with the stock, pledge it for a loan  
14 to keep it off the market, supposedly.

15 In this situation I think it is clear the reason  
16 Mr. Zuber asked for this option is that it didn't cost him  
17 anything. It gave him the right to buy the stock back  
18 at 10. If it went up to 25, he could buy it back at 10.

19 Mr. Grant was a sophisticated individual.  
20 He said he was gambling on the stock. He knew it.  
21 Mr. Zuber was gambling, too. He thought he could make  
22 some money. That's just as logical an interpretation  
23 of that fact as what Mr. Walker wanted to argue to you,  
24 that the option was extracted by Mr. Zuber to keep the  
25 stock off the market.

When you reach a situation where from the evidence you can draw two logical conclusions, one that shows innocence and one shows that guilt, the Government just hasn't met its burden of proof, proof beyond a reasonable doubt. It just hasn't been met.

All right. The mere fact that Mr. Zuber knew that Mr. McKibbon was not supposed to sell the stock which had been given to Mr. Acton and Mr. Clegg for a loan is not sufficient guilty knowledge to charge him with anything. He has got to know why, and that "why" is the key to the situation: the supposed stock manipulation.

Each and every one of the Government's own witnesses testified that they never had a conversation with Mr. Zuber wherein they talked about the sale of Mr. McKibbon's stock depressing in the market or that Mr. McKibbon wasn't supposed to sell his stock because it was part of a manipulation. It just was never told. Just never told.

There has been no testimony that Mr. Zuber knew why the stock wasn't supposed to be sold, and there has been no testimony that Mr. Zuber knew anything about a manipulation in this case whatsoever.

All right, let's review the testimony.

How did Mr. Zuber get into this picture to begin

2 with? That's kind of clear. You find it way down  
3 at the bottom. Mr. Gardner calls Mr. Finkelstein, says,  
4 "There's a problem with some stock in Reno."

5 Then it's Mr. Finkelstein who calls Mr. Zuber in  
6 Los Angeles, apparently, and Mr. Zuber and Mr. Finkelstein  
7 go over to the meeting in Reno. That's how Mr. Zuber  
8 gets into the picture. It is clear that he was not brought  
9 in by Mr. Acton. He wasn't brought in by Mr. Clegg.  
10 He wasn't brought in by Mr. Segal directly, he wasn't  
11 brought in by Mr. Gardner. He was brought in by Mr.  
12 Finkelstein.

**ONLY COPY AVAILABLE**

13 Now, we have got Zuber in the picture. He  
14 certainly wasn't a part of any hierarchy to collect stock  
15 from the old shareholders and to make a market or do any-  
16 thing like that. I don't think the Government even  
17 contends that that is the case.

18 What about the 4100 shares that go to Mr. Zuber,  
19 apparently? Remember, there was an individual from  
20 Hornblower & Weeks that says that McKibbon asked that 4100  
21 shares be sent to Mr. Zuber?

22 Well, it's perfectly consistent with Mr. Zuber's  
23 purpose for going to Reno, and that purpose was to get back  
24 the money and the stock from Mr. McKibbon, who was stealing.  
25 That's all that the evidence demonstrates. That is what

ks11

he did. McKibbon was stealing. He got back the stock. McKibbon was stealing the money, wasn't giving the proceeds to Mr. Acton and Mr. Clegg for the mine. That stock didn't end up in Mr. Zuber's name. There is no evidence that Mr. Zuber sold any of that stock or anything else.

I submit to you the conclusion is that stock went back to Mr. Acton.

Now, there is another reason why the Government's case must fail in this situation, why the Government has not proven beyond a reasonable doubt that Mr. Zuber had guilty knowledge, and that is this:

Mr. Zuber did not perform a single vital function in this supposed manipulation. He was an errand boy, and if people were really manipulating the price of this stock, would they have told Mr. Zuber what they were doing? Would they have told him about the purpose of this alleged conspiracy and created another witness against themselves? Highly illogical. Highly illogical that that would ever occur. It just wouldn't happen.

There is no reason for them to tell Mr. Zuber what was happening and talk about a manipulation or anything else. There is an absolute void in the evidence. As we have discussed, there is nothing concrete to demonstrate beyond a reasonable doubt -- that is important.

2 You may think, well, there is a little speculation, maybe  
3 this, maybe that; it's proof beyond a reasonable doubt  
4 that Mr. Zuber knew of this manipulation, and that proof is  
5 lacking in this case, and with that proof lacking, you must  
6 find Mr. Zuber not guilty.

7 Thank you.

8 THE COURT: We will take a very short recess.

9 (Recess.)

10 THE COURT: All right, Mr. Pape.

11 MR. PAPE: May I proceed? Thank you.

12 May I employ the easel, your Honor?

13 THE COURT: Surely.

14 MR. PAPE: Thank you.

15 May it please the Court, ladies and gentlemen of  
16 the jury:

17 Now, I am sure all of you are very tired this  
18 afternoon. You have been listening to attorneys talk  
19 for a long time today, but I ask you to please be attentive  
20 because this is the last time in the course of this trial  
21 that I will have an opportunity to talk with you, and the  
22 outcome of this trial, Mr. Scardino's entire future and  
23 that of his family and loved ones is in your hands.

24 Now, why is Mr. Scardino here today? I think  
25 that the evidence will indicate that Mr. Scardino is here

1      kslC

JA1261

1110

2      today because he tried to help Burney Acton, and because  
3      he trusted Richard McKibbon.

4           I think it is important to look at who Mr.  
5      Scardino is and was back in 1969 when all this happened.

6           I think the evidence is that in the summer of 1969 Anthony  
7      Scardino had been employed at Foley's Department Store in  
8      Houston, Texas, for 26 years and that he was in the com-  
9      mercial furniture area, the manager of that section of  
10     Foley's, in charge of furnishing buildings and refurbishing  
11     buildings.

**ONLY COPY AVAILABLE**

12           I think in the summer, late summer or early fall  
13     of 1969 Mr. Scardino had the severe misfortune of being in  
14     charge of refurbishing the Riverside Hotel in Reno, Nevada,  
15     in which he owned a small part interest, and he was spend-  
16     ing some time in Reno, Nevada, in the late summer of 1969.

17           I think there are two basic aspects to this case,  
18     and before I start discussing evidence, I want to tell you  
19     how I look at this case.

20           Without reviewing the entire indictment, I think  
21     one aspect of it is, did Mr. Scardino knowingly participate  
22     in a conspiracy to manipulate stock prices and artificially  
23     raise stock prices?

24           I think that after you have heard the evidence  
25     and after you remember the evidence, your answer will be

1 ksl4

JA1262

1111

2 no, he did not.

3                   The second part of the case which I will subse-  
4 quently review is, did Mr. Scardino knowingly and wilfully  
5 transfer stocks and use the mails when he knew that that  
6 stock was unregistered and should have been registered  
7 and, again, I think after reviewing evidence and thinking  
8 about it, your answer will be no.  
**ONLY COPY AVAILABLE**

9                   The Government's first witness was Burney Acton.  
10 Mr. Acton testified that he was in Reno in the summer of  
11 1960; that he had known Mr. Scardino for approximately  
12 a year and that he, Mr. Acton, and Michael Clegg, among  
13 their other business interests, had a wall flocking company,  
14 and they were flocking the walls at the Riverside Hotel,  
15 and that is why they were seeing Mr. Scardino at the  
16 Riverside Hotel.

17                   Now, regrettably for Mr. Scardino, Mr. Acton  
18 came to him and said, "We need some business" -- that is  
19 Mr. Acton's testimony -- "concerning a corporation Mr.  
20 Clegg and I have acquired," and Mr. Scardino introduced him  
21 to Mr. Squal who also had an interest in the hotel.  
22

23

1 mmh 1

JA1263

1

T4 2 Now, that is where Mr. Scardino's part in the  
3 entire scheme stops until he helps Acton raise money by  
4 borrowings against the shares. But let's look at Acton's  
5 testimony concerning the introduction to Segal.

6 Burney Acton testified on direct examination  
7 that he and Clegg and Segal and Scardino met in Dallas,  
8 during which time Pioneer Development Company was briefly  
9 discussed. He said that that was a general discussion  
10 concerning whether Mr. Segal could help raise money. I  
11 want you to remember that all that happened more than five  
12 years ago. I want you to also remember that Michael Clegg--  
13 in my opinion his recollection seems a little clearer--  
14 testified that the only people that were present at the  
15 meeting in Dallas were Segal, Clegg and Acton. However,  
16 I think I am in a position that even accepting as gospel  
17 truth every word of every government witness, Mr. Scardino  
18 is not guilty in this case. The reason I say that concerning  
19 the Dallas meeting is that Mr. Acton testified that there  
20 was only a general discussion. Mr. Acton testified that  
21 at no meeting at which Mr. Scardino was present was there ever  
22 scheme discussed of the taking of companies or the trading  
23 of shares. Mr. Clegg testified that the only time Mr.  
24 Scardino ever met with Clegg and Segal was not in Dallas,  
25 but in an accident meeting, very brief meeting, in Reno

1 mmmh2

JA1264

2 at the hotel.

3 Mr. Acton testified that he remembered that  
4 accidental meeting, too, but even taking as gospel truth  
5 Burney Acton's testimony, he said that after the first  
6 accidental meeting in Reno and after the meeting in Dallas  
7 at which no plan or no transfer of shares to New York  
8 was discussed, Mr. Scardino never again met with Segal,  
9 Clegg and Acton during the entire course of events.

10 Burney Acton testified that the first time --  
11 and this is not cross-examination testimony; this is direct--  
12 he testified that the first time the taking of stock to  
13 open trading in New York was ever discussed was at the  
14 October 23rd meeting at the Century Plaza Hotel in Los  
15 Angeles, and that Anthony Scardino was not at that meeting,  
16 and that Anthony Scardino never had anything to do with  
17 Pioneer Development stock meetings after that.

b2 18 You heard Dwain Knigge's testimony about share-  
19 holders' meetings in Reno. Scardino was never at any of  
20 these meetings and there was never any testimony that he  
21 was at any of those meetings, and if he had been at any  
22 of those meetings I am sure the government would have brought  
23 it out. Clegg also testified to the best of his recollection  
24 there was never any discussion of transfer of shares of  
25 Pioneer to New York or any kind of scheme or manipulation

1 mmmh3

JA1265

2 at which Scardino was present. So I think, ladies  
3 and gentlemen, that you must decide from the testimony  
4 you have heard that there is no evidence that Anthony  
5 Scardino ever had anything to do with a plan to manipulate  
6 shares or a plan to artificially raise the price of stock.  
7 I point out that the government by my count put on 20  
8 witnesses concerning directed trading and touting of stock,  
9 and all that happened in New York. Not one of those 20  
10 witnesses ever mentioned the name Anthony Scardino. You  
11 never heard one government witness say that Anthony  
12 Scardino said, "Buy this stock." You never heard one  
13 government witness say that Anthony Scardino said, "Sell  
14 or buy or that the company is a good company, or that the  
15 mine is great. He had nothing to do with it. He was  
16 concerned with his own business in Houston and the business  
17 in Reno with the hotel. What the government witnesses  
18 testified concerning what happened here in New York with  
19 that stock, and not one mentioned the name Anthony Scardino  
20 one time.

21 Again I point out to you that if they had anything  
22 to do with Anthony Scardino in the manipulation of stock  
23 here and quoting in the pink sheets and all that, Mr. Walker  
24 would have brought it out.

25 Let's consider some of those 20 New York witnesses

mmh4

who did not mention Mr. Scardino. My own impression of most of them was that they were greedy people who thought they could make it, that they had a hot tip on a stock and could make "quick" money. But even taking a person like Don Shepherd, if you remember him, the businessman from Texas, Pioneer Casualty Company, a similar name, he testified about his dealings in Pioneer stock, and he did not mention Mr. Scardino. I say that if you will carefully consider all of the testimony that you have heard concerning a conspiracy to manipulate stock and a conspiracy to artificially raise prices, you will remember that not one witness ever said Anthony Scardino misrepresented anything to him or even represented anything to him concerning Pioneer Development Company. And I think that on that whole conspiracy to artificially raise prices your verdict will be not guilty.

Now, let's move to the second part, the second thing that Mr. Scardino is basically charged with here, his transferring unregistered shares of Pioneer Development stock. As other attorneys have pointed out to you, an essential element of that is that he should have known or he knew that the stock was not registered and that it should have been registered with the Securities and Exchange Commission. I point out again to you that at the time all

1 mmh5

2 of this took place Mr. Scardino had been in the furniture  
3 business for 26 years; he was not a stock transfer agent;  
4 he was not a stockbroker; he was not an attorney.

5 We freely admit that 11,000 shares was put in  
6 Scardino's name by Burney Acton and that those 11,000 shares  
7 were transferred in his name and that Mr. Scardino got  
8 \$15,000 of the proceeds from the transfer of those shares.

9 We freely admit that and we say that he had no criminal  
10 intent or evil motive or knowledge that it was wrong when it  
11 happened.

12 But now let's look at the evidence as to how  
13 this came about. Burney Acton testified that he went to  
14 Mr. Scardino, he said, "Mr. Scardino, we need to borrow  
15 some money against Pioneer Development stock. Can you help  
16 us borrow money?" Burney Acton said that Mr. Scardino  
17 came back to him at a subsequent time and said, "Yes, we  
18 have found a place in Tucson where we can place a loan.  
19 We can pledge the stock against the loan." Mr. Acton also  
20 testified -- and this is very important -- that Mr. Scardino  
21 told him at the time, "I could use some money, too, Mr.  
22 Acton." And Mr. Acton said, "I will lend you \$7,500 if you  
23 place the loan in Tucson."

24 Now, this is important, I want you to remember,  
25 Burney Acton testifying on direct examination that he told

1 mmh6

JA1268

2 Mr. Scardino that the stock is free trading stock. You  
3 can check it out. Mr. Acton said he told Mr. Scardino the  
4 names of brokers that Mr. Scardino could call to make sure  
5 that the stock was being freely traded. Now, this is  
6 important, Mr. Scardino believed that that stock could be  
7 freely traded. Look who he was dealing with. He was dealing  
8 with Hornblower, Weeks. You heard Mr. Jack Kelly or Joe  
9 Kelly, I think his name was, the SEC investigator, I asked  
10 him the question what kind of reputation does Hornblower,  
11 Weeks have as a brokerage firm, and he said, "The best."  
12 That is who Mr. Scardino was dealing with.

13 At this point Mr. Acton gave Mr. Scardino a 5,000-  
14 share certificate. That certificate is in evidence, as  
15 Government's Exhibit 1K. I want to point out a couple of  
16 things about that certificate, and you will have an op-  
17 portunity to look at it if you so desire. The first thing  
18 I want to point out is there is nothing stamped or written,  
19 no legend, in other words, on this certificate that says  
20 it cannot be freely transferred or freely traded. I hope  
21 you remember Mr. Dwain Knigge, the transfer agent, who came  
22 in and testified. He is a professional transfer agent,  
23 and his testimony was that he followed the Securities  
24 and Exchange Commission guidelines in issuing these certi-  
25 ficates, and it was his understanding that unless a share

1 mmh7

JA1269

b3 1 had a legend on it saying it could not be freely transferred  
2 that it could be freely traded. The second thing I want  
3 to point out to you is that the certificate is in the name  
4 Tony Scardino, the certificate. There is no attempt here  
5 by Mr. Scardino to conceal what he is doing, no use of  
6 false names, no use of false addresses.

7  
8 How did Mr. Scardino come to get that certificate?  
9 I think you will remember a gentleman coming in here  
10 testifying named Mr. Parris. Mr. Parris says that he met  
11 Mr. McKibbon and Mr. Scardino in Reno, and on direct  
12 examination -- I want you to remember this -- Mr. Scardino  
13 remembered very clearly that he met Mr. Scardino and Mr.  
14 McKibbon. He testified that Mr. Scardino and Mr. McKibbon  
15 told him that they had shares of stock they wanted to sell.  
16 He testified that Mr. Scardino and Mr. McKibbon told him  
17 that Mr. Scardino and Mr. McKibbon did not have any brokerage  
18 accounts anywhere, so they could not sell the stock. Would  
19 he sell the stock at a cut-rate price or would he buy it  
20 from them. Parris bought it from them at a cut-rate price  
21 and then sold it. That was Parris' first testimony. Then  
22 because we had the good fortune of Mr. Scardino having  
23 Mr. Parris write a letter to the Securities and Exchange  
24 Commission in 1970, when his memory was better -- we have  
25 it marked here as Defendant's Exhibit A -- Defendant's

1 mmh8

JA1270

111.

2 Exhibit states much more clearly what really happened,  
3 and I hope you will request an opportunity to read this.  
4 If I may read briefly from it, it says:

5 "We were introduced to a Mr. Richard E. (Dick)  
6 McKibbon. McKibbon represented himself as a talent booking  
7 agent for entertainment in various clubs in Reno-Tahoe  
8 area. He in turn introduced me to a Mr. Anthony J.  
9 (Tony) Scardino, of Houston, Texas, a department manager  
10 of Foley's Department Store in Houston, Texas.

11 "Mr. McKibbon said Mr. Scardino had 5,000 or 10,000  
12 shares of Pioneer Development stock for sale and would let  
13 me buy at below market if I could pay cash, since he didn't  
14 have any brokerage accounts anywhere and I had one in  
15 Denver."

16 Now, the government has prepared this chart  
17 (indicating). You heard what Mr. Parris said in the letter,  
18 that Scardino or McKibbon said Scardino wanted to sell  
19 at a cut-rate because Scardino didn't have any brokerage  
20 accounts. You see here that that 5,000 shares was sold  
21 for \$36,459.53. You see that when it was broken up, George  
22 Parris, the account of George Parris received \$3,650.  
23 That he got, according to his testimony, just because  
24 Scardino and McKibbon didn't have brokerage accounts at  
25 that time and they had to have an account to sell the stock

1 mmh9

JA1271

11.1)

2 through. That is what Parris said was the reason that  
3 the stock was sold to him. Now I want you to very carefully  
4 look at Scardino's Exhibit B, which was admitted in  
5 evidence this morning. It is two account statements from  
6 Shearson, Hamill & Company, a national brokerage firm,  
7 showing that Mr. Anthony J. Scardino, 770 South Post Oak  
8 Lane, Houston, Texas, had a brokerage account and was  
9 trading shares of stock in Houston in November of 1969,  
10 and in December of 1969 on the same date that he went to  
11 Tucson there was even a stock sale through this account.  
12 So I ask you, ladies and gentlemen, to review this in the  
13 jury room. If Mr. Scardino had a brokerage account, as  
14 he did, in Houston, Texas, at the time of this transaction  
15 and if Mr. Scardino intended to sell those 5,000 shares,  
16 like Parris says, why would he give away \$3,650 of it to  
17 a water moccasin like George Parris. I guarantee you that  
18 does not comport with reality, ladies and gentlemen, and  
19 I will tell you now if Anthony Scardino thought he was doing  
20 something wrong everything would not have been in his name.

21 Concerning the things that were in his name,  
22 I will show you also Government's Exhibit 30A. There was  
23 testimony that Richard McKibbon worked for Anthony  
24 Scardino or for the hotel at this time. There is also  
25 evidence from the Hornblower Weeks checks that Richard

1 mmh10

JA1272

112

2 McKibbon held a power of attorney to act on Anthony  
3 Scardino's behalf during that time period. Mr. Scardino  
4 was spending a great deal of time in Houston. I think the  
5 jury can infer, I think you will, that you trust a man  
6 when you give him your power of attorney. You trust him  
7 a great deal, because that enables him to act on your behalf  
8 in legal matters.

9 Now, if Mr. Scardino signed this letter to Mr.  
10 George Parris saying, "Enclosed is certificate number  
11 1596 of Pioneer Development Corporation which I sold you  
12 as of November 6, 1969, very truly yours, Tony Scardino" --  
13 and we don't say he didn't sign it -- I represent to you  
14 that he signed this because he trusted Richard McKibbon  
15 and I also point out again that Tony Scardino is doing  
16 everything in his own name 100 per cent in the open.

17 Government Exhibit 20C, the Scardino account  
18 at Hornblower & Weeks, again, Mr. Tony Scardino's legitimate  
19 address, 770 South Post Oak Lane, Houston, Texas, his  
20 Social Security number, everything else, no attempt to  
21 conceal anything, any part he had.

22 I think the evidence is that what happened here--  
23 I don't know, ladies and gentlemen, whether Parris was  
24 in on it; I was not satisfied with his answer when I asked  
25 him why he never having lived in Denver, Colorado, with

1 mmhll

JA1273

11.1

2 brokerage firms all over Tucson, why he did this deal  
3 through a Denver stockbroker -- I don't know whether  
4 Parris and McKibbon and Parker had something going;  
5 all I do know is that Richard McKibbon got \$32,000 of that  
6 \$36,000; I know that George Parris got \$3,650; I know  
7 that of Richard McKibbon's \$32,000, \$10,000 of it went  
8 to Acton and Clegg; I know that \$13,000 of it went to  
9 Burney Acton. Mr. Scardino had originally agreed to take  
10 that certificate to borrow money for Acton and Clegg.  
11 And I know that Tony Scardino got \$4,000 out of it. He  
12 was supposed to get \$7,500 out of that first loan for  
13 his part in arranging the loan. Mr. Parris testified  
b4 14 that he and Richard McKibbon received \$459.53 and sent  
15 Tony Scardino a cashier's check in the amount of \$450.  
16 McKibbon told Parris that Scardino wanted the \$450 and  
17 told him that if Scardino didn't get it Scardino was going  
18 to give him a haircut.

19 I want you to remember, and you can read this  
20 letter again, everything in here, Parris was talking with  
21 McKibbon and not with Scardino, the entire thing.

22 As far as the stock being freely traded, Parris  
23 said, "I called my broker in Denver and he said bring  
24 the stock to Denver, Colorado, let them check it out and  
25 if it could be sold they would sell it for me."

Now, he was talking about Hornblower & Weeks,  
and they said that they could sell it for him and he said,  
"I called Mr. McKibbon, and it was agreed he would meet  
me in Denver, bring the stock, and together we would go  
to the broker and complete the sale." He didn't call  
Mr. Scardino; he called Mr. McKibbon. The only thing  
Mr. Scardino had to do with the transfer of that share was  
he took it to Tucson to show it to Mr. Parris on November  
7th. We don't deny that. He and Mr. Parris, according to  
Mr. Parris' testimony, went to a bank in Tucson on  
November 7th, discussed the loan. The banker could not lend  
the money. That was Parris' testimony, and Scardino took  
that 5,000-share certificate back to Reno and turned it  
over to Acton or McKibbon, and it was Parris' testimony  
that when that stock was traded, was transferred, it was  
not Anthony Scardino that took it up to Denver, that share,  
it was Richard McKibbon. I don't want to spend time reading  
the letter. But he said, "I met Mr. McKibbon at the airport  
in Denver as I flew in from Tucson, I arrived about 30 minutes  
before he flew in from Reno, Nevada. We immediately went  
to the broker's office and met Mr. John Parker at Hornblower  
Weeks. Mr. Parker checked out the stock with whomever--  
I don't know -- the stock was in the name of Anthony J.  
Scardino, as I remember it, with a transfer to me."

1 mmmh13

2                   Mr. Scardino was not there. Everything is Mr.  
3 McKibbon, Mr. McKibbon, Mr. McKibbon, and I submit to you,  
4 ladies and gentlemen, that Mr. Scardino was used as a  
5 sucker. He in good faith was trying to get a loan for  
6 Burney Acton; he was trying to get a loan for himself,  
7 \$7,500, and he fell into the hands, unsophisticated sucker  
8 as he was, fell into the hands of people like McKibbon and  
9 Parris, and they sold the stock.

10                  Now, let's turn to the 6,000 shares. Remember  
11 the testimony concerning the 6,000 shares? That was in  
12 Mr. Scardino's name. How did that come about? The testi-  
13 mony was that after November 10th Mr. Acton or Mr. Clegg  
14 received a telephone call saying that stock was showing up  
15 in the west. If you remember, both Mr. Acton and Mr. Clegg  
16 testified that they called Tony Scardino in Houston, Texas,  
17 and they asked him on the telephone, "Tony, has that stock  
18 been sold?" And he said, "No, it has not," that is, the  
19 5,000 shares. Acton and Clegg testified they got on the  
20 plane, went down to Houston to see Tony Scardino, and in  
21 his office in Houston they said, "Tony, we have information  
22 that the stock has been sold and it was not to be sold."  
23 And Tony says again, "It hasn't been sold to my knowledge.  
24 I will check." The testimony was he picked up the telephone,  
25 made a call, told them, "I have checked and it has not been

1 mmhl4

2 sold." I have a good idea who Mr. Scardino called and who  
3 told him it had not been sold.

4 Now, at that point Mr. Acton and Mr. Clegg were  
5 satisfied and they said, "Good. Mr. Scardino, can you  
6 borrow some more money from the same source, from the same  
7 trust fund." This was all done in Houston. And if you  
8 will remember Acton and Clegg's testimony, and it coincided,  
9 Scardino said, "Well, McKibbon is really handling this.  
10 Is it okay that Mr. McKibbon handles it?" And they said,  
11 "Yes, McKibbon can handle it." So that loan is the second  
12 loan that they have requested that Mr. Scardino arranged  
13 for them from the same purported trust fund in Tuscon or  
14 Denver.

15 I submit to you, ladies and gentlemen, at this  
16 time when all the evidence is in it will show that out of  
17 the first 5,000 shares that was put in Scardino's name  
18 and the next certificate of 6,000 shares that was put in  
19 Scardino's name, Mr. Scardino got a total of \$15,000, and  
20 I submit to you that \$7,500 was for getting the first loan  
21 and \$7,500 was for getting the second loan.

22 When the 6,000-share certificate was put in his  
23 name, again, 6,000 shares issued November 14th, after  
24 Acton and Clegg had flown down to Houston, Acton and Clegg  
25 testified that they never delivered it to Tony Scardino as

1 mmhl5

2 far as they knew, they delivered it to Richard McKibbon.  
3 Again, there is no legend on the front, nothing that would  
4 indicate that it cannot be traded, and it is made out in  
5 the name of Tony Scardino. I want to point out at this time  
6 that when Mr. Scardino was agreeing to have certificates  
7 put in his name he had these representations made. Acton  
8 had told him the stock is free trading. Acton had told him,  
9 "Here are the names of brokers you can call to make that  
10 determination." Michael Clegg was talking to Tony Scardino  
11 about this stock and could have told him that Dwain Knigge,  
12 the transfer agent, had told him it was free trading as  
13 long as it didn't have a legend on it. Burney Acton told  
14 Mr. Scardino, "We have to borrow against this stock; it  
15 cannot be sold." Mr. Acton has testified that he even went  
16 further and told Mr. Scardino, "It cannot be sold because  
17 I promised Mr. Segal it wouldn't be sold." But when Mr.  
18 Acton was asked, "Did you ever tell Mr. Scardino why it  
19 could not be sold?" Acton said, "No, I did not." Here  
20 we have Scardino doing everything he can, being very busy  
21 with his own work, working through McKibbon, whom he  
22 trusted at the time, to help Acton and Clegg raise money and  
23 at the same time try to get some funds for himself as loans  
24 from Acton and Clegg.

25 Now, McKibbon, I suppose -- I don't remember any

JA1278

mmhl6

2 testimony about it -- but here we have the proceeds of  
b4 3 the sale of the 6,000 shares.

4 We have a check from Hornblower & Weeks, with  
5 a portion of the 6,000 going to Tony Scardino. But then  
6 they went downstairs to the bank, was Mr. Parker's testimony,  
7 got a \$30,441 cashier's check. Dick McKibbon got over  
8 \$15,000 of that; Tony Scardino got \$5,000 of it. That brings  
9 his total so far to \$9,000 of the \$15,000 that the under-  
10 standing was that he was to receive. Acton and Clegg  
11 got \$10,000. So Acton and Clegg are still getting money  
12 from these purported loans, but sales. Okay. This \$1591  
13 and \$13,850 is out of the \$15,000. So of that \$30,000,  
14 McKibbon got 15, Scardino got 5, and Acton and Clegg got  
15 10. Then the remainder of that 6,000 shares was sold  
16 November 24th, made out to Tony Scardino, signed by McKibbon  
17 power of attorney. \$14,000 of that went to Acton and Clegg;  
18 \$1,000 went to Tony Scardino. The chart doesn't indicate  
19 where the rest went, but so far that total is \$4,000 of the  
20 last certificate for Mr. Scardino, plus \$5,000 is nine,  
21 received out of \$15,000 anticipated for getting what the  
22 evidence indicates Mr. Acton and Mr. Clegg and Mr. Scardino  
23 thought were loan proceeds.  
24  
25

T5 pm

1 jks

JA1279

1128

2 Now, Mr. Parker was the stockbroker from  
3 Hornblower & Weeks at Denver. He is not longer a stock-  
4 broker. He is now a rancher.

5 He testified that Scardino and McKibbon came  
6 together to pick up this 30,000 on November 18th. He also  
7 testified, if you will remember, that all of his dealings  
8 on that date were with Mr. McKibbon, that he hardly spoke  
9 with Mr. Scardino at all. If he spoke with him at all,  
10 he does not remember it, and he does not even remember what  
11 Mr. Scardino's voice was like, so he never knew, when he  
12 was talking on the telephone, whether he was talking with  
13 Anthony Scardino or not.

14 Now, I want to tell you now what the importance  
15 is of whether in Mr. Scardino's mind the stock was being  
16 sold or was being borrowed against. Either one is a  
17 technical transfer. To either one it is a defense  
18 that he didn't know the stock had to be registered.

19 So the importance is, it shows that Anthony  
20 Scardino had no evil motive whatsoever when this stock was  
21 run through his name and when he received these bonds.  
22 Not only did he not have any criminal intent or he wouldn't  
23 have done everything in his name and with his address on  
24 it when he lived at the same place for 26 years; not only  
25 did he not only have no criminal intent, but he didn't

1 jks

1129

2 have any evil intent or any intent to back-door any plan  
3 that was going on in New York. That is the importance  
4 of showing that Mr. Scardino, as did Mr. Acton and Clegg,  
5 I think always thought that the stock was being put up for  
6 loans, where McKibbon was cutting under them and selling it.

7 But I think it is important because it shows  
8 not only is he not guilty in the sense that he felt the  
9 stock didn't have to be registered. I think he had no  
10 evil motive whatsoever. He wasn't trying to gyp Acton  
11 and Clegg. He wasn't trying to back-door any scheme in  
12 New York, because he wasn't aware of any scheme. If there  
13 was in fact a scheme.

14 Again, you will have an opportunity, if you wish,  
15 to examine these certificates. I point out to you again  
16 there is no legend on them. There is nothing that says  
17 they are not freely transferable.

18 You will remember from the testimony, Acton and  
19 Clegg said that after they got word that stock was being  
20 sold, they went down to Houston, talked with Mr. Scardino.

21 He said, "I'll check and make sure."

22 He made a call. He said, "No, it's not  
23 being sold."

24 They were satisfied.

25 And he also told them at that time, "McKibbon is

1 jks

1130

2 handling this. Is that okay with you?"

3 And they said yes.

4 Now, as evidence of the fact that McKibbon was  
5 really handling it, I want you to remember Government's  
6 Exhibit 1-Q.7 Government's Exhibit 1-Q shows that the next time  
8 any shares, any certificates were transferred, they were  
9 transferred not to Anthony Scardino, but to Richard  
10 McKibbon. That is 10,000 shares on one certificate and  
11 8000 shares on another certificate, transferred November 21,  
12 1969.13 Now, the reason I think that is important, that  
14 we got 18,000 shares in McKibbon's name and 11,000 shares  
15 in Scardin's name, is because Michael Clegg's testimony was  
16 always the 29,000 shares that McKibbon was handling for  
17 the loans. Always in Michael Clegg's mind, McKibbon was  
18 handling it for the loans. 29,000 total shares.19 Now, we know, having heard the testimony, that  
20 McKibbon was not getting loans. We know that here he  
21 sold 18,000 shares or the bulk of it. He didn't get to  
22 sell it all. This is the wrong chart. Excuse me.  
23 I got them out of order.24 Okay. Of the 18,000 shares in McKibbon's name,  
25 he never got to sell 4100, if you will remember, and you

1 jks

1131

2 can check McKibbon's Hornblower, Weeks account statement,  
3 too. By the time everybody found out what McKibbon was  
4 doing, he still had 4100 shares that he hadn't been able  
5 to sell. But of this 18,000, McKibbon sold some of them;  
6 13,900 on December 16, 1969, got \$79,000 for it in his name.  
7 Of that 79,000, 53,000 went to Richard E. McKibbon in one  
8 cashier's check: 20,000 went to Richard E. McKibbon in  
9 another cashier's check; 5000 went to Anthony Scardino.

10 Now, I submit to you that here in mid-December,  
11 after Scardino is completely out of the raising money  
12 through shares part of it, the reason McKibbon still trans-  
13 ferred 5000 to Anthony Scardino is that Scardino still had  
14 5000 coming.

15 If you will remember from these other charts,  
16 Scardino got a total of 4000, 5000, and 1000, total of  
17 \$10,000.

18 McKibbon knew that Scardino was supposed to get  
19 7500, the first certificate, 7500 the second certificate.  
20 McKibbon knew that Scardino is still missing \$5000 when  
21 he sold 79,000 worth, and I think McKibbon, getting ready  
22 to skip the country or whatever, didn't want to rock the  
23 boat and be discovered, and in order to keep from being  
24 discovered, he made sure Scardino got all that he antici-  
25 pated getting and probably, with all this 20,000, 53,000

1 jks

1132

2 and 4100 more shares still in his account to sell, probably  
3 McKibbon would have sold that last 4100 shares, pocketed  
4 the proceeds and skipped if it had not been for one thing,  
5 and you remember what that one thing was that prevented  
6 McKibbon from doing that. That was a meeting in Reno  
7 between Christmas and New Year's shortly after McKibbon  
8 had dumped all of this, and you remember what Mr. Acton and  
9 Mr. Clegg testified happened, the way that meeting came  
10 about.

11 They testified that people said there's stock  
12 missing. Stock has been sold. Money is missing.  
13 Who has sold the stock? Where is that stock?

14 And if you will remember, Mr. Acton, Mr. Clegg,  
15 said they called Anthony Scardino in Houston and said,  
16 "We are having a meeting to determine what has happened  
17 to the stock."

18 They said Anthony Scardino's reply was, "What do  
19 you mean? It's been pledged as a loan."

20 They said, "No, it's been sold."

21 He said, "I will be right up there to Reno, to  
22 that meeting."

23 Nobody came and got Mr. Scardino and made him  
24 go to that meeting. He went to see what had been going  
25 on.

2                   And do you remember what happened at that  
3 meeting?       Acton and Clegg testified that at that meeting?  
4                   Acton and Clegg testified that at that meeting initially  
5 McKibbon said he hadn't sold the stock.       Then subsequent-  
6 ly McKibbon admitted he sold the stock.

7                   Now, very important:

8                   When McKibbon admitted at that meeting that he  
9 had sold the stock, I think you will remember that that was  
10 Acton's testimony, not Scardino admitted he had sold the  
11 stock;   McKibbon admitted he had sold the stock.

12                  And there was exact testimony by Mr. Acton that  
13 when Mr. Zuber asked McKibbon what happened to the stock  
14 and the proceeds from the stock, Mr. Scardino said, "I would  
15 like to know myself."

2                  And there was testimony from Mr. Acton, who was  
16 at that meeting, that Mr. Scardino expressed surprise when  
17 he found out that Mr. McKibbon had sold the stock, and  
18 there was also testimony by Mr. Acton that after the  
19 meeting McKibbon said, "Well, Mr. Scardino, do you want  
20 to help me pay for some protection?"

22                  And Scardino said, "I don't need any protection."

23                  And what he meant when he said that, I submit,  
24 ladies and gentlemen, was, "I haven't done anything wrong.  
25 I didn't have awnything to do with your dirty business."

1 jks

JA1285

1134

2 Now, regrettably, I think Mr. Scardino had  
3 trusted Richard McKibbon until then, had trusted him until  
4 that meeting in Reno, when McKibbon admitted what had  
5 happened to the stock.

6 I submit again, ladies and gentlemen, that unless  
7 you do trust a man, you don't give him your power of  
8 attorney.

9 I submit also that Mr. Scardino used very poor  
10 judgment in some of his associations, such as Richard  
11 McKibbon. But he is not on trial here today for his  
12 poor judgment. He is on trial here today charged with  
13 the felony offenses of knowingly conspiring to manipulate  
14 and make a market, and the felony offenses of knowingly  
15 transferring stock that should have been registered.

16 Now, knowingly and wilfully -- I want to get  
17 back to that one more time. As I said, it is not important  
18 as far as a technical violation is concerned whether Anthony  
19 Scardino sold the stock or whether he put it up for a loan.  
20 What is important, and what the Government must prove  
21 beyond a reasonable doubt is that in transferring the shares,  
22 Mr. Scardino knew that the stock should have been regis-  
23 tered.

24 You have got to prove some criminal intent or  
25 some evil motive. And I submit to you that there has

1 jks

1135

2 been no proof of criminal intent or evil motive. And  
3 this goes through the whole mail fraud count and everything  
4 else.

5 There has got to be some proof of some criminal  
6 intent.

7 And again, concerning what was in Mr. Scardino's  
8 mind about transferring the stock, I call your attention to  
9 these items:

10 Acton had told Scardino the stock is free trading.  
11 Scardino, when he went up to Denver, was dealing with  
12 Hornblower & Weeks, a very reputable firm, and not some fly-  
13 by-night firm that one would try to use if he thought he  
14 was doing something illegal.

15 Also the fact that that firm was dealing in the  
16 stocks, I am sure, created or fortified the impression  
17 that the stock was free trading.

18 Secondly, I point out again everything Anthony  
19 Scardino did was done in his name, with his address, no  
20 subterfuge. If he thought he was committing a crime,  
21 if he thought that stock had to be registered, when you live  
22 the same place for 30 years and you know you are committing  
23 a crime, you don't do it with your name, with your address.

24 Ladies and gentlemen, I think it is just obvious.

25 Now, transferring shares. How many people

2 who testified here for the Government did the same thing?  
3 How many people transferred that stock, bought it, sold it,  
4 not knowing that it was unregistered?

5 You have had testimony from Mr. Schiffman who,  
6 of course, never mentioned Mr. Scardino, that he thought it  
7 was free trading stock, and he was an SEC attorney.

8 You had testimony from the Karfunkels, that they  
9 thought it was free trading stock.

10 I am sure all these people who bought and sold  
11 the stock thought it was free trading stock because people  
12 just don't intentionally commit crimes -- at least not  
13 where I'm from, they don't, and put their name all over it.

14 Now, I hope and trust that you will be able to  
15 have listened to all the testimony and not group everyone  
16 together. I hope that you will not cast your votes on  
17 a guilt by association basis. I hope you will review  
18 the documents that are in evidence.

19 I know you are tired. I know you are eager  
20 to get home. But how your vote does affect Mr.  
21 Scardino's entire future.

22 We are pretty still old-fashioned in Texas.  
23 I still have a great deal of faith in our system of criminal  
24 justice here, and I still have a great deal of faith in a  
25 jury's common sense, and I still believe that when there

1 jks

JA1288

1137

2 is no evidence that a man has knowingly done anything  
3 wrong, and when there is no evidence that a man has  
4 knowingly committed a crime, that a jury will not blemish  
5 his record with a criminal conviction.

6 Now, I hope and trust that each of you who  
7 believes that Mr. Scardino did not intend to commit any  
8 crimes, or each of you who has a reasonable doubt, will have  
9 the fortitude to vote that way and keep voting that way.  
10 I would even ask that when you go back into that room to  
11 deliberate that the first thing you do is discuss Anthony  
12 Scardino's role in this thing. He has nothing to hide in  
13 this thing. I want you to discuss it, and I would hope  
14 that after discussing it, after considering all the evidence  
15 of what his role was in this entire affair, I would hope  
16 you would vote not guilty on all counts as to this man  
17 and let us go back to Texas.

18 And I thank you very much.

19 THE COURT: We will recess now, adjourn now until  
20 tomorrow morning at 10 o'clock. Don't talk about the  
21 case. Don't let anybody talk about it with you.

22 (Jury left the courtroom.)

23 THE COURT: I want to commend all defense  
24 counsel on very fine summations. We will wait with eager-  
25 ness the Government's effort tomorrow. Then I follow  
with my feeble attempts.

(Adjourned to Wednesday, December 11, 1974, at  
10.00 o'clock a.m.) ---

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE  
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

JA 1289

1137a

EXHIBIT INDEX

Defendant  
Scardino

In  
Identification   Evidence

B

1019

TRANSCRIPT OF PROCEEDINGS BEFORE MacMAHON, D.J., ON DECEMBER 11, 1974 JA1290  
UNITED STATES OF AMERICA

7½ Cr. '08

HOWARD FINKELSTEIN, et al.,

**Defendants.**

New York, December 11, 12, 13, 1974

Before:

Hon. LLOYD F. MACMILLAN,

District Judge.

## STENOGRAPHER'S MINUTES

1  
2 UNITED STATES OF AMERICA  
3 vs.  
4 HOWARD FINKELSTEIN, et al.

5  
6 December 11, 1974,  
7 10:10 A.M.

8 (Trial continued)  
9  
10 --  
11  
12 THE COURT: Good morning.  
13  
14 All right, Mr. Walker.  
15  
16 MR. WALKER: Thank you, your Honor.  
17  
18 May it please the Court, defense counsel, Mr.  
19 Allen, ladies and gentlemen of the jury:  
20  
21 At the outset I would like to thank you for  
22 your patience and attentiveness during this trial. Now,  
23 while it wasn't a particularly long trial, I think you can  
24 all agree that it was quite an intense trial. It was a  
25 hard fought trial.  
  
Much has happened in this case, and it has  
been clear that you have paid careful attention to the  
evidence as it has come in.  
  
The court pointed out to you at the opening of  
this trial that it is impossible for all of the evidence  
to come in in sequence, in a narrative fashion. The evidence  
has to come in in bits and pieces. It has to come in  
in parts, and I am sure that many of these pieces were put

1 jkh

1139

2 into place by yourself as the evidence came in during  
3 the course of the trial, and during my summation, at this  
4 time, it will be my job to point out how the pieces form  
5 a coherent picture, a picture that the government submits  
6 proves beyond any question the guilt of these defendants  
7 in this case.

8 Now, this case is not a complicated case. Although  
9 you have heard many witnesses and seen many documents that  
10 have come in, the case essentially is not complicated.

11 The question here is whether there was a scheme,  
12 whether there was a conspiracy to sell unregistered Pioneer  
13 stock, to create an artificial market in the stock, and  
14 ultimately to defraud the innocent investing public by  
15 selling the stock.

16 And the question is did the defendant join in  
17 and participate in this activity with the knowledge of its  
18 purpose?

19 The government submits that the proof in this  
20 case is conclusive on this point. The proof has been  
21 established both through numerous witnesses who have  
22 testified and who corroborated each other fully on the  
23 essential elements and essential points in this case, and  
24 also full proof and full and complete corroboration by  
25 the documents which have been received here in evidence.

1 jkh

JA1293

1140

2 And these documents, ladies and gentlemen, these  
3 documents do not change. These documents are immutable  
4 and it is the government's position that there are key  
5 documents in this case which incriminate each and every  
6 one of the defendants here on trial, and I will point them  
7 out to you during the course of this summation, in addition  
8 to the evidence from the witnesses.

9 At the heart of this case, ladies and gentlemen,  
10 is the unlawful agreement not to sell Pioneer stock in  
11 the west, an agreement which the government contends binds  
12 all of these defendants to this conspiracy. This agreement  
13 not to sell in the west was at the capstone of the planned  
14 manipulation in this case, because if there was selling  
15 in the west, there is no way that the artificial market  
16 could be maintained, and the agreement not to sell is  
17 what ties in Mr. Scardino and Mr. Zuber and Mr. Howard  
18 to Mr. Segal, the defendant sitting over there.

19 Each one of these defendants, we submit, was  
20 aware of this unlawful agreement and acted around it, with  
21 the knowledge of its existence, and we submit to you that  
22 this unlawful agreement which had to be enforced in Reno,  
23 in the end of December, in 1969, is the essential core  
24 of this conspiracy.

25 Now, you heard nearly four hours of defense

1 jkh

JA1294

1141

2 summations yesterday and I did not interrupt them during  
3 that period of time because it was their turn to address  
4 you and we lawyers have a sort of unwritten agreement that  
5 we don't interrupt each other in the course of our summations.  
6 Now, that doesn't mean I agree with what they said. I  
7 disagreed with most of it. I would have liked to have  
8 jumped up and have objected to many things they said  
9 but I didn't do it.

10 At the outset, let me say, as I did at the  
11 beginning of this trial, how important this case is. The  
12 case is important, of course, to both sides. It is  
13 extremely important to the government, ladies and gentlemen,  
14 because it is the government's job, it is my own job for  
15 the time that I am in the U.S. Attorney's office, and it is  
16 the job of the U.S. Attorney's office, in the Southern  
17 District of New York, to enforce the securities laws,  
18 and the laws against fraud and conspiracy when they are  
19 violated in this district.

20 It is the job of our office to see that the public  
21 is protected from fraud and the sale of worthless securities,  
22 from being stuck with worthless paper, stock which is  
23 unregistered with the SEC and which has an inflated value.

24 It is our job to see that the laws are complied  
25 with so that the public is not consciously deprived of those

1 jkh

JA1295

1142

2 facts which the public needs to make an informed investment  
3 decision when securities are sold on the market; facts  
4 which are required by law to be contained in a registration  
5 statement; facts which are essential for an investor to  
6 operate and to make a decision as to whether to buy, sell  
7 or hold stock.

8 Now, security is not like a head of lettuce or  
9 a suit of clothes that you can understand and you can value  
10 when you see it. A security is a piece of paper, and  
11 these Pioneer certificates that you see here look like any  
12 other security. They look like a General Motors security  
13 or any other security.

14 The public, when they see one of these securities,  
15 may be impressed with the security by its appearance, but  
16 they have to know, the public has to know what exists  
17 behind the facade of this security.  
18  
19  
20  
21  
22  
23  
24  
25

T2 am

1 ms

JA1296

1143

2 We submit that this is the core of the registration  
3 provisions of the 1933 Securities Act, information,  
4 the disclosure of information to the public so that the  
5 antiseptic light can be shown on the corporation whose  
6 securities are being sold to the public, so that if things  
7 are rotten in the corporation, or if the corporation is  
8 not earning any money, or if there is a corrupt transaction  
9 going on, or if there are no revenues or no production,  
10 the public is aware of that fact. That is the basis for  
11 the security laws and the registration laws.

12 You can see that if these laws are not complied  
13 with, worthless stock can be foisted on an unsuspecting  
14 public, a public searching for information about a partic-  
15 ular company.

16 You heard witnesses here who said they couldn't  
17 find anything out about this company, there were no regis-  
18 tration statements, no prospectuses, they couldn't get the  
19 information they wanted. One witness, Bob Meyer, went  
20 to Mr. Segal for information, and all he got was hot air.  
21 That is a gross deception on the public when worthless  
22 securities are peddled in this manner. That is the heart  
23 of this case.

24 I will ask you to look as we go through this  
25 summation as to who derived the profits, who got the profits

2 from this fraud, who got the profits from foisting over  
3 these securities on an unsuspecting public in this case.

4           Thousands of dollars were lost by investors in  
5 this case, you may find. You heard witnesses here  
6 testify to that. Meyer testified to \$30,000, Mr.  
7 Nerenberg testified to \$10,000, I believe Berman testified  
8 and Fingar testified to 16 or 17,000 dollars lost.

9 Who was responsible for this?

10           These men were only a portion of the people who  
11 bought the stock, you may find. We submit that the  
12 defendants in this case were responsible for it, because  
13 they acted out of the greed that was necessary for them  
14 to perpetrate this crime. These were defendants who  
15 were looking for something for nothing. That is what  
16 they wanted, fast, easy money, something for nothing.  
17 That is the hallmark of the fraud, the hallmark of a fraud  
18 being where a guy does not do a thing, he just takes in  
19 money. That is what you see in this case.

20           We will discuss Mr. Scardino's transaction, the  
21 \$15,000 he's got. We will discuss the \$300,000 that  
22 Mr. Segal got; we will discuss the fur coats; we will  
23 discuss the money, the thousands of dollars that Mr. Howard  
24 got in his transaction.

25           At the core of this case, I want you to realize

1 ms

JAI 298

1145

2 that the practical facts were withheld from the public,  
3 the practical facts about Pioneer, or, we call them, non-  
4 facts. There wasn't a penny of revenues; there was not  
5 an iota of production; there was not't a cent of earnings --  
6 there was nothing.

7 There was a long with the mercury mine, a long  
8 shot that Mr. Segal would not even take, because you will  
9 recall the evidence, once that \$20,000 check bounced Mr.  
10 Segal said good-bye to the mercury mine, and ~~not~~ a penny  
11 came back and went into that mercury mine. That is  
12 Mr. Segal's good faith on the mercury mine.

13 A trial is not a game, it is not a contest  
14 between the defense lawyers and the prosecution to see who  
15 can score more points; it is a search for the truth.

16 The evidence is presented to you in an adversary  
17 fashion so that you, ladies and gentlemen of the jury,  
18 can search for the truth and then act on it, to reach a  
19 verdict in this case. And that is your duty, to search  
20 out for the truth in this case and to act on your findings.

21 How do you reach a verdict? You reach it by  
22 an application of your intelligence and your common sense.  
23 You don't let bias or sympathy sway your decision, because  
24 that would be unfair. That would be unfair to the Govern-  
25 ment; it would be unfair to other defendants involved in

2 this particular case; it would be unfair to the public.  
3 You act on the basis of hard facts; you act on the basis  
4 of evidence. Nor do you act on the basis of any concern  
5 as to what sentence, if any, might be imposed after the  
6 case is over. That is not your function; that is the  
7 function of the Court. You concern yourselves with the  
8 facts of this case and whether the charges are proven in  
9 the indictment.

10 The Government submits to you that it has proven  
11 beyond any question the charges in this case.

12 Now, the evidence that came in came in the  
13 form of testimony, it came in in the form of exhibits, and  
14 it came in somewhat in the form of stipulations between  
15 counsel, stipulation of facts agreed upon. You may have  
16 any of this testimony read back to you during the course  
17 of your deliberations. Similarly, you can ask for any  
18 exhibits that you want. Should you wish exhibits or  
19 testimony, the only thing the Government would request is  
20 that your request be specific and that it be very pointed  
21 and directed, so that you don't waste time.

22 The evidence in this case that came in was of  
23 two kinds, direct evidence and circumstantial evidence.  
24 You heard witnesses testify directly to events which they  
25 saw; you heard witnesses testify to things that they heard

2 other people say. That is direct evidence. You also  
3 were presented with circumstantial evidence, evidence which  
4 flows from inferences or facts proved in evidence which  
5 are inescapable, which lead to a conclusion that it is  
6 irrefutable.

7 Circumstantial evidence is just as probative,  
8 the Government would submit, as direct evidence. In this  
9 particular situation I will point out circumstantial  
10 evidence to you that ties these defendants in inextricably  
11 to this crime. I can give you an example of circumstan-  
12 tial evidence.

13 Suppose you have a small boy and you tell him  
14 that you don't want him to go into the kitchen and eat some  
15 jam. You have a jar of jam on the kitchen shelf. You  
16 tell him, "Don't do that," and you walk out of the room, and  
17 five minutes later you hear a crash in the kitchen, and  
18 you walk back in the kitchen and there is your little boy  
19 sitting on the floor, he has jam on his shirt and jam on  
20 his face, and the jar is broken next to him. You weren't  
21 there to observe him eat the jam, but you know as sure as  
22 you are standing there that the boy disobeyed your order  
23 that he not eat the jam. That is circumstantial  
24 evidence.

25 The Government submits that there is jam on the

2 face of every one of these defendants proven by the  
3 circumstantial evidence in this case.

4 Now, the essential elements of the crime charged  
5 here are proven through circumstantial evidence and direct  
6 evidence usually of two or more witnesses and by the  
7 numerous documents received in evidence. These defense  
8 lawyers who spoke yesterday are acting On behalf of their  
9 clients. They spoke eloquently on behalf of their  
10 clients. The problem that they faced was that the facts  
11 were clear -- their clients did the acts charged. They  
12 couldn't really dispute that. So what did they do?  
13 They had to say, "Well, my client didn't mean it," or  
14 "My client was innocent; he didn't know what he was  
15 doing."

16 I submit to you that that is a transparent  
17 defense and one which you will be able to penetrate when  
18 we go through the facts of this case.

19 In the case of Mr. Doyle, since his client,  
20 Alan Segal, is in it up to his eyeballs, he had to say  
21 there wasn't even a scheme -- well, the other lawyers didn't  
22 take that position -- he had to say there wasn't even a  
23 scheme to make an artificial market in Pioneer, that every-  
24 thing was okay, everything was normal, and that his client  
25 never intended to sell unregistered stock. He said this

2 in the face of the testimony about the unlawful market,  
3 the only market in Pioneer. He said this in the face of  
4 all the testimony to get the price out at a time when there  
5 weren't any assets in the company and to get the price up  
6 to a trading level. He said this in the face of the  
7 agreement which was testified to not to sell stock in the  
8 West in order to preserve the price of Pioneer, because  
9 you know from the evidence that you have heard that when  
10 there is heavy selling in a stock that lowers the price.

11 There is this agreement not to sell in the West  
12 through Hornblower, Weeks, or anywhere else, so that the  
13 artificial price of this stock could be maintained.

14 Who testified to this core agreement, the heart  
15 of this case? Mr. Acton testified to it, Mr. Clegg  
16 testified to it, the agreement not to sell; they testified  
17 that Mr. Segal called up screaming when stock was being  
18 sold in the West and complained. They testified to this  
19 agreement.

20 Mr. Karfunkel testified to it. He was one of  
21 the last witnesses who testified here, and he testified  
22 that when he talked to Mr. Segal in the winter of 1970 or  
23 early January he asked Mr. Segal what had happened in the  
24 stock and was told there had been heavy selling from  
25 Hornblower, and Segal said they were back-dooring him there,

1 ms

JA1303

2 and Mr. Karfunkel explained to you what back-dooring  
3 means.

4 Back-dooring means selling against an agreement  
5 not to sell which people enter into in order to hold the  
6 price of the stock.

7 Mr. Gardner testified to that same situation.  
8 There is full corroboration on that. The best proof of  
9 all, proof of the agreement not to sell in the West, is the  
10 Reno meeting, because if there had been an agreement not  
11 to sell in the West and if Segal hadn't thought that it  
12 had been broken by Acton, Clegg, Scardino, McKibbon, and  
13 the others, he never would have sent the gunman, Zuber,  
14 he never would have sent Howard with him to straighten out  
15 the situation. That is the proof of the facts that there  
16 was an agreement not to sell in the West, this agreement  
17 which is at the heart of this case.

18

19

20

21

22

23

24

25

G3 2                   There is no question about that. Mr. Doyle did  
3 not mention that to you yesterday, this agreement not to  
4 sell in the west, the fact that it was entered into between  
5 these people. He didn't even discuss this with you. Ask  
6 yourselves why.

7                   I submit to you he didn't discuss this agreement  
8 not to sell in the west because he knew that if you thought  
9 about it at all, if you dwelled on it at all, it would  
10 convict his client, and it would convict the other de-  
11 fendants in this case.

12                   Well, it is my job to point that agreement out  
13 in the west to you, and it is my job to tell you and to  
14 ask you to consider this in your deliberations.

15                   Now, Mr. Doyle yesterday suggested to you that  
16 Mr. Segal believed in the mine and that that was some  
17 defense to what he did to the foisting off of these worth-  
18 less securities on the people.

19                   And what was the evidence that he put on in that  
20 regard? A Mr. Buttram who had a conversation with Mr.  
21 Segal in November on the telephone, and then again in  
22 January.

23                   Well, when Mr. Buttram talked to Mr. Segal in  
24 November, it was a month after this stock started trading.  
25 The evidence is clear on that.

1 jkh2

JA1305

2                   And when Mr. Buttram met Mr. Segal in January,  
3                   the stock had been trading for two and a half months.

4                   How can you say that Mr. Segal relied on Mr.  
5                   Buttram when he opened up the trading in the stock? That  
6                   is a question which you can decide quite easily.

7                   You use your common sense on that one.

8                   Now, the question for you to understand is what  
9                   was Mr. Segal's knowledge? What was Mr. Segal's knowledge  
10                  while he was selling Pioneer stock by the barrelful in  
11                  late October and in November, 1969? Mr. Segal, who was  
12                  closely in touch with Acton and Clegg knew that Pioneer  
13                  was in an inactive shell corporation at that time. There  
14                  were no profits in Pioneer, and there were never profits  
15                  in Pioneer.

16                  It is not a question of hindsight. It is a  
17                  question of foresight and middlesight.

18                  Pioneer was a zero as far as earnings were concerned,  
19                  as far as profits were concerned. Pioneer never produced  
20                  anything. Mr. Segal knew that.

21                  So you have a company in late October which has  
22                  no earnings, no production and no revenues, and the stock  
23                  is selling at 6, 7, 8, \$9 a share, and there are 500,000  
24                  shares outstanding. That means that the total value of  
25                  the stock at that time is four and a half million dollars

1 jkh3

JA1306

2 and there is nothing to the company. People are buying  
3 that stock at those prices and there is nothing to the  
b2 4 company.

5 Now, there was talk about the mercury mine. The  
6 government offered an exhibit and this exhibit came in  
7 without objection, and the government offered another exhibit  
8 which came in without objection, Government Exhibit 7  
9 and Government Exhibit 9.

10 Government Exhibit 7 is the minutes of the Lone  
11 Tree Mining Company, and if you read this book, you will  
12 see that this company was incorporated on the 20th of  
13 November, 1969. The company was formed on the 20th of  
14 November, 1969. The stock had been trading for three weeks  
15 before Lone Tree Mining Company was formed.

16 Government Exhibit 9 is the minutes of Pioneer  
17 Development Corporation which reflects the acquisition  
18 of the Lone Tree Mining Company. These minutes are dated  
19 December 3, 1969. Lone Tree wasn't even legally put into  
20 Pioneer until December 3, 1969, which is more than a  
21 month, about six weeks after the stock started trading.

22 This company had its stock trading the first  
23 week in November at \$9 a share, at a time when Lone Tree  
24 Mining Company wasn't even in Pioneer.

25 Segal was in touch with Acton and Clegg. Segal

2 knew these facts. Segal was foisting off this worthless  
3 stock on the public with the knowledge of the non-existence  
4 at that time of Lone Tree Mining Company and Pioneer, and  
5 this mine never developed during the whole course of this  
6 case. The most that can be said for it is the fact that a  
7 mill was put up there some time in April, in April of 1970.

8 The minutes of Pioneer reflect that the company  
9 was sold over to a group called Lewis Marder and Herbert  
10 Cox on March 14, 1970. As of March 14, 1970, Pioneer--  
11 and it is also recited in here that the mercury mine claims  
12 are not to go with Pioneer, so that as of this date you  
13 have Pioneer over here, you have the mercury claims over  
14 here, and even at that time there is no mill put up there  
15 by Mr. Buttram. The mill isn't put up there until April,  
16 in those claims, and by that time there is no relationship  
17 whatsoever between the mercury mine and Pioneer.

18 So this Pioneer stock is trading constantly in-  
19 dependently of any mill that was ever put up at the site.

20 Now, this mine, which you know never went into  
21 production, is, we submit to you, a smokescreen. It is  
22 Mr. Segal's last hope to try to fool you, as he did the  
23 investors in Pioneer, to save himself in this case.

24 Now, this company was flat broke and couldn't  
25 put the mine into operation. Segal knew this better than

1 jkh5

JA1308

2 anyone. Segal knew this because he was being asked to  
3 put money into the mine. Segal knew that if the mine  
4 was ever to get off the ground, it had to have big money  
5 put into it, and what did Segal think of this mine? He  
6 thought enough of it to bounce a \$20,000 check off it. That  
7 was the total money that the evidence showed Mr. Segal  
8 put into this mine. That is the best evidence of the proof  
9 of the fact of what Mr. Segal thought this mine was really  
10 worth.

11 Ask yourselves if this mine was so all fired  
12 great for Mr. Segal, why he didn't put any money into  
13 the mine, why he bounced a \$20,000 check off Acton, Cle~~g~~  
14 and Lamb and didn't put any money in the mine?

15 It is not as though Segal didn't have some money  
16 at that time. Segal was selling off his Pioneer stock  
17 like a bandit. He had \$335,426 by the end of November  
18 that he had accumulated, just a portion of which is the  
19 money that he made, which he accumulated in these various  
20 accounts and checks were drawn in those various accounts  
21 and deposits were made in the Republic National Bank.

22 How much of this money went back to Pioneer?  
23 How much of this money was put into the mine to show Mr.  
24 Segal's "good faith"?

25 Not a penny. Not a penny.

1 jkh6

JA1309

2                   Mr. Segal was ripping off the public at that  
3 time by selling this worthless stock and repeating these  
4 huge rewards.

5                   Ask yourselves, yesterday, why Mr. Doyle didn't  
6 point that out to you, why he didn't point out to you the  
7 fact that Mr. Segal didn't put any money back into the mine  
8 when he was trying to argue that Mr. Segal "believed in  
9 the mine"?

10                  He avoided that one. He avoided that crucial  
11 question because he knew that the answer to that one would  
12 convict his client.

13                  Pioneer had nothing in it.

14                  The Precise Power contract which is in evidence  
15 reflected initially on some financial statements at \$600,000  
16 or thereabouts, and is ultimately reflected in a signed  
17 document, the minutes which showed the transfer of Pioneer  
18 to Lewis Marder. Precise Power is there registered as follows:

19                  "Assets of Precise Power Systems, Inc. as set  
20 forth in this agreement, dated October 29, 1969, which do  
21 not have an actual value in excess of \$5,000."

22                  That is the precise valuation that they put on  
23 their own Precise Power assets. There was nothing in  
24 Precise Power, and the testimony was that Precise Power  
25 never produced a thing, never derived any revenues, never

1 jkh7

JA1310

2 made any money for the company.

3           These Pioneer Casualty debentures, you heard  
4           the testimony of Mr. Don Shepherd, the man who had been  
5           convicted of mail fraud, who got on there to tell you that  
6           he told Clegg, when these Pioneer Casualty debentures  
7           were purchased by Pioneer in exchange for some Pioneer  
8           stock, that these debentures were not even a liability  
9           to Pioneer Casualty Company, that they didn't even have to  
10          be paid except upon the approval of the board of directors.

11          And then you heard the testimony of Acton and  
12          Clegg, that they took these Pioneer Casualty debentures  
13          and tried to raise money on them and couldn't. Nobody  
14          would give them money on that. No bank would lend money  
15          on the strength of those. They were worthless documents.

b3 16          The only other thing that was mentioned was an  
17          American Aluminum claim for \$35,000 which was never collected.  
18          This was a nothing company. This was a nothing company.  
19          And the stock of this company was being foisted off on the  
20          public as being worth something.

21          The government submits that once Alan Segal got  
22          his hands on the 111,000 shares of stock in this case,  
23          the 85,000 shares registered in the name of Francine Zahl  
24          and the 26 some-odd shares registered in the name of Kaighan,  
25          Mariot and Morgan, which Clegg had given to him, that that

1 jkh8

JA1311

2 was it. That was bye-bye. He had his stock and he knew  
3 what to do with it.

4 Now, Mr. Segal didn't pay anything for that stock.  
5 I believe the evidence is, by his own admission, he paid  
6 Acton a thousand dollars for the Van Der Ste n stock,  
7 which was 100,000 shares, of which 50,000 were placed in  
8 Francine Zahl's hands. \$1,000 was paid at that time and  
9 that's it.

10 Talk about getting something for nothing.

11 Segal was interested in stock. Segal was interested  
12 in what stock could do, how he could get it up in value.

13 A key document came in in this case, a document  
14 which more than anything can help you in determining what  
15 Mr. Segal's true intent was in this case.

16 During Mr. Schiffman's cross-examination by Mr.  
17 Doyle, Mr. Doyle asked Mr. Schiffman whether or not there  
18 was some innocent explanation for Mr. Segal's use of  
19 nominees, some innocent explanation for Mr. Segal hiding  
20 behind these nominee corporations, Bona Fide Productions,  
21 Kelli, Jackson & Scott, Francine Zahl.

22 Nothing was in his name.

23 Mr. Schiffman was asked by Mr. Doyle, well,  
24 maybe this was explainable because, you know, he wanted  
25 to avoid creditors, he was concerned about creditors.

1 jkh9

JA1312

2                   And on direct examination I asked him a few  
3                   questions about it, if there was any other reason that he  
4                   had ever discussed with Mr. Segal, and at that point I  
5                   showed him this document, and at that point in this trial  
6                   the jury became -- you became aware of the fact that Mr.  
7                   Segal was no newcomer to this business. Mr. Segal in 1959  
8                   was enjoined by the State Attorney General and by the  
9                   Supreme Court of the State of New York from ever engaging  
10                  in any securities transaction, whether fraudulent or not.

11                  This injunction, which enjoins Alan Irving Segal  
12                  and Alan Associates Securities Corporation, a brokerage firm,  
13                  is an order by a court in New York State back in 1959 to  
14                  Mr. Segal saying, "Stop it. Stop it. You are ordered never  
15                  to touch a security again in this state in a transaction,  
16                  in a commercial transaction. Cut it out."

17                  And this injunction, a state court order, which  
18                  is punishable by contempt, with severe sanctions, had  
19                  been entered against Mr. Segal back in 1959.

20                  I submit to you that at the time of our case  
21                  in 1969, Alan Segal was back at it again, and he was using  
22                  the nominees in this case because, I submit to you, he knew  
23                  that if it was found out, if it became public knowledge  
24                  that Mr. Segal was back again trading in stock, the agents  
25                  of the law would track him down and bring him to account

1 jkh10

JA1313

2 for it, and he wouldn't be able to reap the huge profits,  
3 the easy money, the something for nothing that he got in  
4 this case.

5 Now, Segal was a stock expert all right. Mr.  
6 Scardino introduced Mr. Segal to Mr. Acton and Mr. Clegg.  
7 This is Anthony Scardino over here, who was Mr. Segal's  
8 partner at the Riverside Hotel. He introduced Mr. Segal  
9 to Acton and Clegg as a man who is quite adept, very adept  
10 at selling stocks. He certainly was very adept.

11 Mr. Scardino had every reason to know that  
12 Mr. Segal was very adept because Mr. Scardino had worked  
13 with Mr. Segal as a partner at the Riverside and he could  
14 hold Mr. Segal out, he could represent Mr. Segal as being  
15 very adept in the stocks to Acton and Clegg, and Acton  
16 and Clegg decided to use Mr. Segal's services.

17 You may find in this case also that Mr. Zuber  
18 and Mr. Howard, who went out to Reno to do Mr. Segal's bidding  
19 and to recover money because stock had been sold, knew  
20 that Mr. Segal was very adept, and that they were out there  
21 to enforce the unlawful agreement not to sell in the west  
22 which had been breached, which Scardino and McKibbon were  
23 cheating on; they went out to enforce that agreement and  
24 to keep this conspiracy together, to keep this scheme alive.

25 Mr. Segal was a stock man, and Mr. Segal knew what

1 jkhll

JA1314

2 to do with stock.

3 Good faith? I say fooey to that.

4 Now, the defense lawyers have conjured up other  
5 smokescreens to try to keep you from appreciating the gravity  
6 of this case and the guilt of their clients. There was  
7 the suggestion by Mr. Doyle that it is improbable that  
8 Mr. Segal would want to hurt some of his associates in the  
9 case, some of his associates who bought Pioneer stock on  
10 Segal's recommendation, and then the stock went down. And  
11 he pointed to Mr. Schlager, Mr. Aymes and Mr. Cohen.

12 Well, the government agrees with that. The point  
13 is that those individuals were asked to go into the stock  
14 by Segal to create demand, to create buying power so that  
15 the stock would go up in price and Mr. Segal hoped to take  
16 them out when the stock did go up in price even higher,  
17 and they would all make money.

18 But there was selling in the west and so the  
19 scheme didn't work as well as Segal would have liked. Oh,  
20 it worked pretty well for Mr. Segal. The price got up to  
21 \$9 a share, and he was selling at those prices, \$9 a share.  
22 But his friends were not so fortunate.

23 Now, look at the pattern of buying in this case  
24 to support the market by Segal. The government submits that  
25 that is the clue to his intentions. Segal wasn't putting

1 jkh12

JA1315

2 money into the mine. He was taking some of the profits  
3 that he got from this stock swindle and putting it into  
4 certain buying in order to keep the price up, in order to  
5 keep the market inflated. And at the same time that he  
6 was doing all of these things, all of these machinations,  
7 and all of this activity, the innocent public who never  
8 had a registration statement to look at, who never had a  
9 prospectus to look at, who were in the dark about this  
10 company, were buying, and they were buying in all innocence,  
11 without knowledge of what the company was all about.

12 And that is the fraud in this case, this artificial  
13 market, the fact that these people can raise the price of  
14 a stock and thereby attract innocent people into buying  
15 the stock who are not aware of the facts that they are  
16 aware of, and then when the stock goes down at the end,  
17 the innocent people are hurt, and Mr. Segal and his gang  
18 are able to sell out their stock and we have considerable  
19 profits being derived in November and December, 1969, by  
b4 20 Mr. Segal. He is selling stock during that period of time.  
21 He is selling stock and taking that money while he can  
22 and not a penny of it is going back to Pioneer.

23 I submit to you that he knew that Pioneer wasn't  
24 worth a penny and that he didn't want to put a penny of  
25 his money into that.

1 jkh13

2 Now, another smokescreen, the government submits,  
3 that Mr. Doyle raised is whether Clegg lied or was mistaken  
4 when he said to you that he had not sold a thousand shares  
5 through Grimes Hopper & Masser in December.

6 Mr. Doyle wants to make a big point of this issue  
7 since there is a stipulation in evidence that Mr. Jay Walker  
8 said that he sold out the thousand shares for the benefit  
9 of Acton and Clegg.

10 Well, whether Clegg was mistaken or not, the  
11 government points out to you that Mr. Acton wasn't even  
12 asked about this. That is how important it was to Mr. Doyle  
13 during the course of this trial.

14 The government submits that this is a smokescreen  
15 that was just raised by the defense in this case to take  
16 your minds off the facts, the true issues in this case,  
17 the facts which, if you stop and think about them, will  
18 convict Mr. Segal and the other defendants in this case.

19 There was another defense tactic during the  
20 course of this trial and during the summations yesterday  
21 to try to put on trial every one except their defendants.  
22 The government was put on trial. The witnesses were tried  
23 up and down.

24 Well, the witnesses' guilt is not before you.  
25 Many of these witnesses pled guilty in their cases or even

JA1317

1 jkh14

2 in this case. Their guilt is not for you to decide. It  
3 is for you to decide the guilt or innocence of these  
4 defendants and not somebody else.

5 Now, why do they do that? Why do they do that?  
6 They do that because they want to take your attention away  
7 from the crux of this case which is the conduct and the  
8 acts of their defendants.

9 The witnesses which the government called were  
10 of different kinds. There were victims. There were victims  
11 like Aymes. There were victims like Meyer, Berman, Fingar,  
12 Nerenberg, the banks. Do you remember the Industrial Bank  
13 in Boston, and the Guaranty Bank in Boston and the witnesses  
14 came down from those banks, and Mr. Schiffman testified  
15 about loans that had been obtained in Boston and the pledging  
16 of Pioneer stock that had gone on up there and how the  
17 loans were never paid and, of course, Pioneer stock became  
18 worthless, and there were two \$40,000 judgments rendered  
19 against Mr. Schiffman because the loans had been taken out  
20 in the name of Kelli Jackson & Scott.

21 Mr. Segal robbed those banks, \$40,000 each.  
22  
23  
24  
25

T4 am

1 ms

JA1318

1165

2 Pioneer stock was involved because it was put up  
3 as collateral, worthless stock was put up so the banks  
4 would think that they had something of value and would  
5 continue to give Mr. Segal credit. Yet the stock had no  
6 value. Mr. Segal knew that it had no value.

7 Now, Mr. Acton, who testified in this case, was  
8 the first witness. He pled guilty to Count 1 of this  
9 indictment. He admitted his participation of guilt in  
10 the conspiracy. Mr. Acton pled guilty to Count 2 of  
11 this indictment, which charges him, along with Mr. Segal  
12 and Mr. Clegg, with transporting in interstate commerce  
13 111,000 shares of Pioneer stock with no registration state-  
14 ment being in effect.

15 Mr. Clegg pled guilty to the same offenses.  
16 He pled guilty to the conspiracy count; he pled guilty to  
17 Count 2. Judge MacMahon accepted their pleas of guilt  
18 in this case, and their guilt is not before you to decide.  
19 It is the guilt of these defendants for you to decide.

20 The defendant Azzeroni, the broker at Karen &  
21 Company, you remember the young man who was up here and  
22 who testified about the arrangement that he had whereby  
23 he could buy and sell from the Zahl account, and there it  
24 was a no-loss situation, and, thereafter, he took quotes  
25 and directed trades from Segal and Zahl and Schiffman.

2                   He pleaded guilty to the conspiracy count in  
3                   this case for his conduct.

4                   Mr. Schiffman, Mr. Segal's attorney, pled guilty  
5                   in two fraud cases.    He testified for the government.  
6                   Mr. Shepherd pled guilty or was convicted in a mail fraud  
7                   case, some other mail fraud case.

8                   Michael Gardner, who shared Mr. Segal's office  
9                   in December, January of 1970, was convicted of fraud twice.

10                  Now, the defendants say, "How can the Government  
11                 use such witnesses?    How shocking!"    The Government  
12                 has no choice, ladies and gentlemen.    We have to take  
13                 our witnesses as we find them.    Now, I would like to  
14                 have been able to put on Mr. Siffert or put on some person  
15                 of impeccable reputation to be able to testify to the facts  
16                 in this case.    I couldn't find such people.    I had to  
17                 put on the people who were there, the people who associated  
18                 with these defendants; I had to put on the people who were  
19                 involved in a criminal activity, who knew the facts of the  
20                 case.    It shouldn't surprise you that these people are  
21                 crooks; it shouldn't surprise you that these people have  
22                 been convicted of fraud, Government witnesses.    They  
23                 were involved in a criminal activity in this case and they  
24                 are con men and fraud artists.

25                  These witnesses were there, and these are the

1 ms3

2 accomplice witnesses who were party to the offenses in this  
3 case.

4 But the Government did not rest with just putting  
5 on accomplice witnesses to testify as to what everybody  
6 else did. The Government corroborated these witnesses  
7 by putting on more witnesses. The witnesses dove-  
8 tailed, their stories dovetailed.

9 Mr. Clegg, much of his testimony was corroborated  
10 by Mr. Acton, and Mr. Clegg and Mr. Acton, much of their  
11 testimony was corroborated by Mr. Schiffman. Mr. Azzarone's  
12 testimony corroborated Mr. Schiffman's; Francine Zahl's  
13 testimony was used to corroborate other testimony, Mr.  
14 Schiffman's and Mr. Azzarone's. Mr. Gardner testified,  
15 and his testimony was corroborated by Mr. Karfunkel in  
16 great respect, and also by the facts of this case, the  
17 Reno meeting.

18 I also said to you that the Government was  
19 placed on trial in this case. Yesterday things were said  
20 that the Government somehow told these witnesses what to  
21 say. I say to you if you believe for one minute that the  
22 Government set out to fabricate a case in this instance,  
23 I don't want you to spend two minutes in the jury room;  
24 you must return a verdict of not guilty. That is not the  
25 way we play the game; that is not the way our office

1 ms4

JA1321

1168

2 operates, and I submit to you that was a smokescreen that  
3 was thrown out by the defense in this case; it is absurd  
4 beyond belief.

5 Just because a man wears a suit and a tie when  
6 he commits a crime does not make him any more equal, does  
7 not make him any better than any other criminal. A white  
8 collar criminal is just as capable, and, in fact, more  
9 capable of inflicting harm on our society when he wears a  
10 business suit, when he sneaks around in a business suit  
11 conducting his transactions than anybody else, than a  
12 blue collar worker or a man who works with his hands.

13 We submit to you that often these crimes are  
14 more cunning and more treacherous because they are committed  
15 by men with intelligence and stealth, men who are hard to  
16 catch because of the way they conceal their activities.

17 I want to go through the proof in this case  
18 with you to show you evidence, the hard facts which we  
19 submit overwhelmingly prove the guilt of these defendants  
20 now on trial before you.

21 You recall the testimony of Acton and Clegg that  
22 in the early part of 1969 they went about acquiring the  
23 old shares of Pioneer Development Corporation and they  
24 accumulated some 200,000 shares or thereabouts from old  
25 shareholders, and also at that time there was a hope for

1 ms5

1169

2 the acquisition of American Aluminum & Steel, which fell  
3 through, and as of July or August of 1969, Acton and Clegg  
4 had all of the stock and nothing else; they had no American  
5 Aluminum & Steel, which had gone out the window.

6 Now, the shareholders that existed at that time  
7 had approximately at that time 515,000 shares, and these  
8 shares are recorded in Government's Exhibit 2 in evidence,  
9 a document which was a key document for our understanding  
10 the sale of unregistered stock counts in this case. It  
11 reflects that there were as of May 16, 515,400 shares out-  
12 standing. The activity in the stock subsequent to May 16  
13 is all traced in the key documents, the key transfer  
14 records which came in evidence through Mr. Knigge, who  
15 is the transfer agent in Reno, Nevada, and essentially  
16 these documents when put together show the acquisition of  
17 a large block of some 200,000 shares by Acton and Clegg.  
18 And this chart, Government's Exhibit 147 in evidence, shows  
19 what happened to this stock.

20 This stock was eventually transferred from these  
21 old shareholders here on the left side over to these names  
22 on the right side. I will have more to say about those  
23 later. But it is the transfer of that large block of  
24 stock, the 208,950 shares out of the total of 515,000  
25 shares which is the core of the sale of unregistered stock

1 ms6

2 counts in the case. And while I don't want to encroach  
3 upon the Judge's function to tell you what the law is in  
4 this case, if I can just say briefly the fact -- and his  
5 Honor's charge will be conclusive on this -- that when you  
6 re-accumulate this amount of stock with a view to dis-  
7 tribution, and distribute it, a registration statement is  
8 required, and that is obviously to avoid the kind of thing  
9 that happened in this case where the public was subjected  
10 to worthless stock being foisted out on it without any  
11 information being available to it.

12 What happens when Acton and Clegg in the summer  
13 of 1969 are left with this stock? They need money and  
14 they look to Mr. Scardino for help. They ask him does  
15 he have an individual who can help them. And Mr.  
16 Scardino, who is Mr. Segal's partner at the Riverside Inn,  
17 tells Acton and Clegg about Segal; he tells Acton and  
18 Clegg that Mr. Segal is a man who is very adept at trading.  
19 Let me read to you from page 421 of the transcript, this  
20 is Mr. Clegg's testimony. He says:

21 "A I explained to Mr. Scardino the predicament  
22 we were in as regards Pioneer being --

23 "Q What did you say to him?

24 "A That we are several months behind schedule  
25 on the stock trading; do you have any ideas on how

1 jkh3

2           3. On or about the dates hereinafter set forth,  
3       in the Southern District of New York and elsewhere, the  
4       defendants ACTON, AZZERONE, CLEGG, HOWARD, McKIBBON,  
5       SCARDINO, SEGAL and ZUBER, unlawfully, wilfully and knowingly  
6       did cause to be placed in post offices and authorized  
7       depositories for mail and did cause to be delivered by  
8       mail, according to the directions thereon, to the persons  
9       hereinafter set forth, certain mail matter, to wit, con-  
10      firmations, comparisons of purchases and sales of Pioneer  
11      stock, and letters:

12	COUNT	DATE	PERSON TO WHOM MAILED
13	30	10/24/69	Nevada Agency & Trust Company 2 Ryland Street Reno, Nevada Attn: Mr. Dwayne Niggi
14	32	10/29/69	Nevada Agency and Trust Company 2 Ryland Street Reno, Nevada 89501 Mr. Dwain Kniggi
15	33	10/31/69	First Philadelphia Corp. 80 Wall Street New York, New York
16	34	10/31/69	Mr. Robert B. Meyer c/o Fashion Novelty Corp. 21 Universal Place Carlstadt, N.J. 07002
17	37	11/7/69	Karen & Co. 2 John Street New York, N.Y. 10038
18			
19			
20			
21			
22			
23			
24			
25			

1 Jkh4

	<u>COUNT</u>	<u>DATE</u>	<u>PERSON TO WHOM MAILED</u>
2	39	11/24/69	First Philadelphia Corp. 30 Broad Street New York, New York 10004
3	40	11/26/69	Jeff Howard 150 E. 61st St. New York, New York
4	41	12/1/69	Jeff Howard 150 E. 61st St. New York, New York
5	43	12/31/69	Mr. Robert B. Meyer c/o Fashion Novelty Corp. 20 Universal Place Carlstadt, N.Y. 07002
6	44	2/2/70	Economic Planning Corp. 122 East 42nd Street New York, N.Y.
7	45	3/11/70	Mr. Robert B. Meyer c/o Fashion Novelty Corp. 20 Universal Place Carlstadt, N.J. 07002

16 (Title 15, United States Code,

17 Title 18, United States Code.)

18 THE COURT: The counts 17 through 45 which have  
19 just been read to you, contained within that bracket,  
20 charge the defendants named in those counts with violations  
21 of the antifraud provisions of the Securities Act and  
22 the mail fraud laws. Those laws provide, in pertinent part,  
23 the anti-fraud provision of the Securities Act provides that  
24 it is unlawful for any person in the offer and sale of any  
25 securities by the use of any means or instruments of

1 || jkh5

2 transportation or communication in interstate commerce  
3 or by the use of the mails, directly or indirectly:

4           1. To employ any device, scheme or artifice  
5         to defraud or,

6                   2. To obtain money or property by means of any  
7 untrue statement of a material fact or any omission to  
8 state a material fact necessary in order to make the statements  
9 made, in light of the circumstances under which they were  
10 made, not misleading, or  
                       )

11           3. To engage in any practice or course of business  
12 which operates as a fraud or deceit upon the purchaser.

The mail fraud law provides:

1        jkh6

2        guilty of a criminal offense.

3              Now, in the context of this case, in order to  
4        convict a defendant on counts 17 through 19, 21 through 23,  
5        28 through 29, 30, 32 through 34, 37, 39 through 41 and 43  
6        through 45, the government must prove to your satisfaction  
7        beyond a reasonable doubt each of the following elements:

8              1. The existence of a scheme or artifice to  
9        defraud in the manner charged in the indictment and in  
10      connection with the sale or offer to sell Pioneer stock.

11             2. That the defendant devised or intended to  
12      devise the scheme charged in the indictment or aided, assisted,  
13      joined, associated or participated in the scheme, knowing  
14      its means and its purposes.

15             3. That the defendant used or caused to be used  
16      the mails of the United States in effectuating or attempting  
17      to effectuate that plan or scheme.

18              Now, the first element of the offense is the  
19        existence of a scheme or artifice to defraud. A scheme or  
20        artifice is simply a plan for the accomplishment of some  
21        object. Fraud includes all the many ways which human imagination  
22        can devise and think of and which are resorted to by one  
23        individual to gain an unfair advantage over another by  
24        false representation, suggestion or by suppression of the truth.

25        Thus a scheme to defraud is merely a plan to gain some

1 jkh7

2 advantage of value by trick or deceit.

3       Lies, of course, are one kind of fraud. But  
4 direct lying is not the only form of deceit with intent to  
5 mislead which can be fraudulent. If there is an intention  
6 to deceive, fraudulent representations may be effected by  
7 deceitful means or half truths or by the concealment or  
8 omission of material facts.

9       An intent to commit a fraud or to mislead is  
10 an essential element of the crime and without such an in-  
11 tention to deceive, there can be no crime.

12       The kind of scheme forbidden by the securities  
13 laws is a scheme employed in connection with the sale of  
14 securities. The scheme forbidden by the mail fraud laws  
15 is one to defraud or to obtain money or property by means  
16 of false or fraudulent pretenses or representations or promises.  
17

18       There is thus included everything designed to  
19 defraud by false pretenses or false representations as to  
20 the past or present or false promises as to the future.

21       On this phase of the matter it is sufficient  
22 if you find beyond a reasonable doubt that the defendant  
23 made promises which he at the time he made them had no  
24 intention of keeping or performing.

25       It is not necessary under the law that the  
schemers succeed in their plan or that they actually profit

JA1427

1 jkh8

2 by their scheme.

3 As I have stated, a false representation or  
4 promise does not amount to fraud unless it is made with  
5 a fraudulent intent. However impracticable or visionary  
6 a plan may be, the use of the mails to execute it does not  
7 constitute a crime if the plan was devised in good faith.  
8 Honesty and good faith on the part of the defendant is always  
9 a good defense to the charges made in these counts. An  
10 honest belief in the truth of the representations made by  
11 him is not a misrepresentation. It is a good defense however  
12 inaccurate the statements may turn out to be later.

13 In short, we must judge this by what was in  
14 the defendant's mind at the time he made the statement and  
15 not as one of the lawyers put it yesterday, with flawless  
16 hindsight.

17 The significant fact is the intent and the purpose  
18 with which the defendant made the statements, failed to  
19 make statements or omissions or in which he acted.

20 On the other hand, in considering whether or not  
21 a defendant acted in good faith, you are instructed that  
22 the belief of a defendant, if you find that such belief  
23 existed, that ultimately everything would work out so that  
24 no one would lose any money, does not require a finding by  
25 you that he acted in good faith. No amount of honest belief

JA1428

1 jkh9

2 on the part of a defendant that his venture will succeed  
3 in such a way that no one suffers any loss will excuse  
4 fraudulent actions by him or false representations by  
5 him which may subject others to the possibility of such  
6 loss.

7 To find a violation of the law, there must a  
8 wilful and knowing act by the defendant. A defendant may  
9 not be convicted unless he knowingly and wilfully did the  
10 acts charged against him and with an intent to defraud.

11 The mere fact that a statement may be incorrect  
12 or even a gross misrepresentation of the facts does not  
13 amount to fraud or deceit unless the statement was made by  
14 the defendant knowingly and wilfully and with an intention  
15 to deceive.

16 In other words, the defendant himself must know  
17 that the statement is false. He must say something that  
18 is contrary to what he himself believes.

19 An act is wilful within the context of the fraud  
20 counts if it is done voluntarily and purposely and with a  
21 specific intent to deceive or defraud as I have defined those  
22 terms.

23 The reason the words "knowingly and wilfully"  
24 are in the statute is to insure that no one will be convicted  
25 of a crime because of mistake, inadvertence, carelessness or

1 jkh10

2 other innocent reason.

3           Here you should apply my earlier instructions  
4 on what constitutes knowledge and wilfulness.

5           In this sense you must consider what was the  
6 intention and purpose of the defendant in the transactions  
7 involved in the alleged scheme to defraud. Was he engaged  
8 knowingly in the scheme to obtain money or property by  
9 fraudulent means? And if so, were the U.S. mails used to  
10 execute such design and purpose?

11           The offenses depend largely on a state of mind,  
12 and it is for you to determine what that state of mind was,  
13 whether it was an innocent one on the part of the defendant  
14 or whether his acts were done knowingly with an intent to  
15 defraud and to deceive.

16           It is not sufficient for the government merely  
17 to prove that the defendant conducted business in an im-  
18 provident or even a reckless manner. It must be shown beyond  
19 a reasonable doubt that his intent and purpose was to deceive  
20 and, two, to defraud.

21           Now, If you find that a scheme to defraud existed,  
22 then you must next consider as to each defendant whether  
23 he devised or intended to devise the scheme charged or whether  
24 he aided, assisted, joined, associated, or participated in  
25 the scheme, knowing its means and objectives.

1 jkhll

2           In this regard you need not find that the  
3 defendant participated in each separate act or transaction  
4 or even that he knew of every transaction involved in the  
5 scheme. If and when the existence of the scheme charged  
6 in the indictment and the participation of any or all of  
7 the defendants in such a scheme has been found, then the  
8 acts done and the statements or omissions of any person  
9 found by you to be a party to the scheme, whether or not  
10 such person is now a defendant, may be considered as to  
11 any defendant whom you find to have been a party to the  
12 scheme, even though such acts and statements may have been  
13 made in the absence and even without the knowledge of such  
14 defendant, provided such acts were done and such statements  
15 or declarations were made by a co-conspirator within the scope  
16 of the scheme, during its continuance and in furtherance  
17 of its purpose and common plan or objective.

18           Similarly, a mailing caused by one of the  
19 defendants in furtherance of the common scheme binds any  
20 defendant whom you find to be a party to the scheme.

21           You must next decide whether any one of the  
22 defendants used or caused to be used the mails of the United  
23 States in effectuating or attempting to effectuate the  
24 scheme charged.

25           To that for the purpose of preventing the mails

1 jkh12

2 from being used as instruments of schemes or artifices  
3 or to carry them into effect that these laws were passed  
4 by Congress. Thus, the offense charged in these counts is  
5 complete when a scheme and an intent to defraud exists  
6 and an attempt is made to execute the scheme by knowingly  
7 using or causing the United States mails to be used, regardless  
8 of whether the use of the mails was or was not a part of  
9 the scheme originally, and regardless of whether or not  
10 the matters placed in the mails were effective to accomplish  
11 that purpose, so long as the use of the mails was closely  
12 related to the objects of the scheme.

13 It is not necessary for the government to prove  
14 that the defendant actually placed any letter in the mail.  
15 It is sufficient if the defendant caused a mailing to be  
16 made in furtherance of the scheme.

17 If the defendant took steps which he knew or  
18 could reasonably have foreseen would naturally and probably  
19 result in the use of the mails, then you may find that he  
20 caused the mails to be used, and it is sufficient if the  
21 letters or confirmations or documents had been mailed by  
22 agents or employees of the defendant in furtherance of the  
23 scheme to defraud.

24 If the matter is mailed in execution of or by way  
25 of an attempt to execute a scheme to defraud, an offense is

1       Jkh13

2       committed under the mail fraud law, and it is immaterial  
3       to whom the mailing is sent.

4           If the mails are used in connection with the  
5       sale of securities, pursuant to a scheme or artifice to  
6       defraud, an offense is committed, and it is immaterial to  
7       whom the mails are sent.

8           Accordingly, it is not necessary that the mail  
9       matter be sent to the person or persons intended to be  
10      defrauded, and it is sufficient if it is mailed to anyone  
11      in furtherance of the scheme.

12           Each specific use of the mails in furtherance  
13      of the scheme to defraud constitutes a separate and distinct  
14      criminal offense.

15           You must consider all of the evidence and determine  
16      whether you are satisfied beyond a reasonable doubt that  
17      the defendant caused the mails to be used.

18           It is not necessary that the matter mailed contain  
19      in itself anything criminal or objectionable or any mis-  
20      representations or that it disclosed any fraudulent purpose.  
21      The matter mailed may be wholly innocent in itself. All  
22      that is necessary is that it be designed to aid or further  
23      the execution of the scheme.

24           Thus, the mailing of stock certificates, confirmation  
25      orders and the like would constitute a violation of the mail

1 Jkh14

2 fraud statute, if they were caused by the defendant and  
3 were in furtherance of and closely related to the scheme.

4 Consider each of the securities fraud and each  
5 of the mail fraud counts and each defendant named in them  
6 separately.

7 It may help your deliberations if you approach  
8 the mail fraud counts in this order: First you should consider  
9 whether there was a scheme to defraud. If you find that there  
10 was not, drop your deliberations and acquit all of the de-  
11 fendants named in all of the mail fraud counts.

12 If you find that the evidence shows beyond  
13 a reasonable doubt that there was a scheme to defraud,  
14 then you must go on to decide whether the mails were used  
15 or caused to be used in each of the mail fraud counts for  
16 the purpose of executing the scheme.

17 If as to any count you find that the mails were  
18 not used for that purpose, stop your deliberations as to  
19 that count and acquit the defendants so far as that count  
20 is concerned.

21 If as to any count you find that the mails  
22 were used or caused to be used for the purpose of executing  
23 the scheme, then you still must determine whether each of  
24 the defendants named in the count knowingly participated  
25 in the scheme or devised it himself.

1 Jkh15

2 If you find that he did not devise the scheme  
3 or did not knowingly participate in it, then you must  
4 acquit him. But if you find beyond a reasonable doubt that  
5 he did knowingly devise the scheme or knowingly participate  
6 in the scheme, then you may convict him on that count.

b3

7 You should apply the same approach for the  
8 securities fraud counts 17, 18, 19, 21, 22, 23 and 28 and  
9 29.

10 Now, counts 2 through 14, 16 through 19, 21  
11 through 23, 28 through 30 and 32 through 34, 37, 39 through  
12 41 and 43 through 45 also charge the defendants named in  
13 those counts either with the actual commission of the crime  
14 or as an aider and abettor of the crime charged in each  
15 of these counts.

16 Now, it is a crime to aid or abet or induce  
17 another person to commit a crime. There is no precise rule  
18 as to what act a defendant must perform in order to be an  
19 aider and abettor. Any person who voluntarily takes an  
20 active part in promoting or facilitating the commission of  
21 a crime, with knowledge of the unlawful purpose, bears the  
22 same responsibility under the law as one who commits the  
23 crime directly. Before you can convict a defendant for  
24 aiding and abetting, however, you must find that the crime  
25 was committed by some person and that the defendant

1 jkh16

2       consciously and knowingly associated himself with the  
3       criminal venture and with the intent that his conduct would  
4       help its success.

5                  You must be convinced beyond a reasonable doubt  
6       that he was doing something to promote or to forward the  
7       crime of the other person, that he was a conscious, knowing  
8       assistant or participant rather than a mere bystander or  
9       spectator. And you must find that he had a stake in its  
10      outcome and in its success.

11                 A defendant is criminally responsible if you  
12      find beyond a reasonable doubt that he knowingly and  
13      intentionally commanded, requested, encouraged, promoted  
14      or aided another in planning or committing a crime.

15                 It is essential that he knew of the criminal  
16      purpose and intended his participation to aid in its  
17      accomplishment. It is not necessary for the government to  
18      prove that the defendant profited in any way from the crime.  
19      It is enough that he knowingly helps the success of the  
20      criminal venture.

21                 At this point we will take a very short recess  
22      and I will then discuss the remaining count, the conspiracy  
23      count, with you.

24                 Don't discuss the case among yourselves at this  
25      time

JA1436

1 jkh17

2 (Recess.)

3 THE COURT: All right, we will now discuss  
4 the conspiracy count, count 1.5 Would you read count 1 up to the overt acts,  
6 please, Mr. Barrett.

7 THE CLERK: INTRODUCTION

8 The Grand Jury charges:

9 1. At all relevant times Pioneer Development  
10 Corporation ("Pioneer") was a dormant corporate "shell"  
11 without substantial assets. As of January, 1969 approximately  
12 500,000 shares of Pioneer were outstanding and there was  
13 no active market in the stock. At no time either prior  
14 to or during the activities described herein was there filed  
15 with the United States Securities and Exchange Commission  
16 ("SEC") any registration statement with respect to any  
17 Pioneer stock issued or offered to the public.18 2. At all relevant times, the defendants BURNEY  
19 ACTIN ("ACTION") and MICHAEL CLEGG ("CLEGG") were business  
20 partners.21 3. At all relevant times, JOSEPH AZZERONE  
22 ("AZZFRONE") was the named principal of Karen & Co.,  
23 a New York broker dealer.24 4. At all relevant times, the defendants HOWARD  
25 FINKELSTEIN, a/k/a Robert Howard ("HOWARD"), ALAN SEGAL

JA1437

1 Jkh18

2 ("SEGAL"), and EDWARD ZUBER ("ZUBER") were not regularly  
3 employed.

4 5. At all relevant times, RICHARD MCKIBBON  
5 ("MCKIBBON") was employed at the Riverside Hotel, Reno,  
6 Nevada.

7 6. At all relevant times, ANTHONY SCARDINO  
8 ("SCARDINO") was employed by Foley's Department Stores,  
9 Houston, Texas.

10 7. This Introduction is hereby incorporated  
11 and realleged in each count of this Indictment as if set  
12 forth fully herein.

13 COUNT ONE

14 The Grand Jury further charges:

15 I. The Conspiracy

16 1. From on or about August 1, 1968 up to and  
17 including December 31, 1970, in the Southern District of  
18 New York and elsewhere, the defendants ACTON, AZZERONE, CLEGG,  
19 HOWARD, MCKIBBON, SCARDINO, SEGAL and ZUBER and George  
20 Aaron, William Casey, Leonard Close, Michael Gardner, Michael  
21 Karfunkel, Sheldon Lamb, Eddie Levine, Don Ross, Stuart  
22 Schiffman, and Don Shepherd, named herein as co-conspirators  
23 but not as defendants, and other persons to the Grand Jury  
24 known and unknown, unlawfully, wilfully and knowingly did  
25 combine, conspire, confederate and agreed among each other to

1 Jkh19

2 commit offenses against the United States as hereinafter  
3 set forth.

4 - II. The Object of the Conspiracy

5 2. The object of this conspiracy was to secure  
6 control of many thousands of shares of stock, never registered  
7 with the S.E.C., in an inactive "shell" corporation,  
8 namely Pioneer, then to establish an artificial market  
9 in the stock through manipulative devices, including  
10 quotes at arbitrarily selected prices, touting, giving  
11 assurances against loss, and directing trades, and then  
12 finally to sell, pledge and distribute this unregistered  
13 stock at artificially high prices, to purchasers and  
14 lenders in order to fraudulently obtain many hundreds  
15 of thousands of dollars at their expense.

16

17

18

19

20

21

22

23

24

25

2                   "III. The Means by Which the Conspiracy was  
3                   Carried Out.

4                   "3. Among the means by which the defendants  
5                   and their co-conspirators would and did carry out the  
6                   conspiracy were the following:

7                   "(a) In early 1969, Acton would obtain control  
8                   of the books and records of Pioneer, a dormant  
9                   corporate shell without substantial assets and with  
10                  approximately 500,000 unregistered shares originally  
11                  issued and outstanding.

12                  "(b) The defendant Acton and co-conspirators  
13                  Aaron and Casey would collect thousands of shares of  
14                  Pioneer from existing shareholders at little or no  
15                  cost through representations to the effect that stock  
16                  remaining in the hands of the existing shareholders  
17                  would increase in value.

18                  "(c) The defendants Acton and Clegg would  
19                  become the 'Secretary' and 'President' respectively  
20                  of Pioneer.

21                  "(d) The defendants Acton and Clegg would give  
22                  the defendant Segal approximately 111,000 shares of  
23                  Pioneer stock, ad to which there was no registration  
24                  statement on file with the SEC, to enable the defendant  
25                  Segal to create an artificial market in Pioneer and

2 to distribute all or part of said stock to the  
3 public.

4 "(e) The defendant Segal would transport the  
5 approximately 111,000 shares of unregistered Pioneer  
6 stock obtained from Acton and Clegg in interstate  
7 commerce from Reno, Nevada to New York, New York, to  
8 create an artificial market in Pioneer stock and to  
9 distribute all or part of this unregistered stock to  
10 the public.

11 "(f) The defendants Acton and Clegg and co-  
12 conspirators Lamb, Shepherd and Ross would arrange to  
13 place of insubstantial value of unproven worth into  
14 Pioneer some of which 'assets' would be misrepresented  
15 by the defendants Segal and Levine, among others, to  
16 investors and potential investors in Pioneer as having  
17 substantial value and proven worth.

18 "(g) The defendants Segal, Levine and Azzerone  
19 would manipulate and inflate the price of Pioneer stock  
20 by artificial means, including but not limited to the  
21 following:

22 "(i) The defendant Azzerone would cause Karen  
23 Company to open trading in Pioneer at \$5 per share upon  
24 instructions relayed to him from the defendant Segal.

25 "(ii) The defendants Segal and Levine would

1 ms3

2 tout and make false and misleading claims about  
3 Pioneer to investors and potential investors to create  
4 an artificial demand for Pioneer in the market and  
5 thereby cause the price to rise.

6 (iii) The defendant Segal would cause people to  
7 purchase Pioneer through assurances, express and implied  
8 that, if the stock went down in price he would cover  
9 the losses in order to create further demand for  
10 Pioneer in the market.

11 "(iv) The defendant Segal would direct purchases  
12 and sales of Pioneer among brokers so as to support the  
13 market in Pioneer.

14 "(h) The defendants Segal, Acton, Clegg,  
15 Howard, Scardino, McKibbon and Zuber, among others,  
16 would sell, pledge and otherwise distribute and make  
17 use of unregistered Pioneer stock at artificially  
18 inflated prices for their own benefit and gain in the  
19 following transactions, among others.

20 "(i) The defendant Segal would sell off through  
21 a nominee account at Karen & Company in New York  
22 11,000 shares of unregistered Pioneer stock at prices  
23 between \$5-7/8 and \$8-1/2 per share.

24 "(ii) The defendant Segal would sell off  
25 through accounts at Orvis Brothers in New York 29,450

2 shares of unregistered Pioneer a stock at prices between  
3 \$6-1/2 and \$9 per share and 3800 shares of unregistered  
4 Pioneer stock at prices between \$4-1/2 and \$6-1/2 per  
5 share.

6 "(iii) The defendants Scardino and McKibbon  
7 would sell off a total of 24,900 shares of unregistered  
8 Pioneer stock through accounts at Hornblower, Weeks,  
9 Hemphill & Noyes in Denver, Colorado and would dis-  
10 tribute proceeds of these sales to defendants Acton,  
11 Clegg, Howard, Scardino, McKibbon and Zuber.

12 "(iv) The defendants Acton and Clegg would  
13 sell off 1000 shares of unregistered Pioneer stock  
14 at \$6-1/2 per share through an account at Grimes Hopper  
15 and Messer in Los Angeles, California.

16 "(v) The defendant Segal would cause Kelli,  
17 Jackson & Scott, his nominee corporation, to pledge  
18 9650 shares of unregistered Pioneer stock as collateral  
19 for a loan at the Industrial Bank and Trust Company,  
20 Everett, Massachusetts.

21 "(vi) The defendant Segal would cause Kelli,  
22 Jackson & Scott, his nominee corporation, pledge  
23 2000 shares of unregistered Pioneer stock as collateral  
24 for a loan at the Guarantee Trust Company, Waltham,  
25 Massachusetts.

2 "(vii) The defendant Segal would deliver  
3 2000 shares of unregistered Pioneer stock to Zachery  
4 Swidler to pledge as collateral at the First Israeli  
5 Bank & Trust Company in New York for a \$10,000 loan  
6 of which \$5000 would go to the defendant Segal.

7 "(viii) The defendant Howard would sell off  
8 10,000 shares of unregistered Pioneer stock to co-  
9 conspirator Michael Karfunkel at \$1-1/2 per share the  
10 proceeds of which would be distributed to Acton, Clegg  
11 and Howard.

12 "(ix) The defendants Acton, Howard and Zuber  
13 would trade off of 6900 shares of unregistered Pioneer  
14 stock for 7 fur coats.

15 "(i) The defendant Zuber, representing the  
16 defendant Segal, would use threats of violence to  
17 recover compensation for the unregistered stock which  
18 had been sold into the market by the defendants  
19 Scardino and McKibbon through Hornblower, Weeks  
20 Hemphill & Noyes in Denver, Colorado."

21 THE COURT: "Count 1 of the indictment charges  
22 a conspiracy to violate the securities laws and the mail  
23 fraud statute.

24 One of the purposes of the conspiracy alleged  
25 in Count 1 was to violate an anti-fraud provision of the

1 ms6

2 securities laws, which we have not yet discussed. That  
3 law provides in pertinent part as follows:

4 "It shall be unlawful for any person, directly  
5 or indirectly, by the use of any means or instrument-  
6 ality of interstate commerce or of the mails, . . .

7 "To use or employ, in connection with the  
8 purchase or sale of any security registered on a  
9 National Securities Exchange or any security not so regis-  
10 tered, any manipulative or deceptive device or contrivance  
11 in contravention of such rules and regulations as the  
12 (Securities and Exchange) Commission may prescribe  
13 as necessary or appropriate in the public interest  
14 or for the protection of investors."

15 One of those rules promulgated by the Commission  
16 provides that:

17 "It shall be unlawful for any person, directly  
18 or indirectly, by use of any means or instrumentality  
19 of interstate commerce, or of the mails, . . .

20 "(1) To employ any device, scheme or artifice  
21 to defraud,

22 "(2) To make any untrue statement of a material  
23 fact or to omit to state a material fact necessary  
24 in order to make the statements made, in the light  
25 of the circumstances under which they were made,

2 not misleading, or

3                 "(3) To engage in any act, practice, or course  
4                 of business which operates or would operate as a fraud  
5                 or deceit upon any person, in connection with the pur-  
6                 chase or sale of any security."

7                 In connection with this object of the conspiracy,  
8                 the Government points to the charge that there was an agree-  
9                 ment that if Sejal opened the market in Pioneer and moved up  
10                 the price, Astor and Clegg could not sell their stock in the  
11                 West so as to depress the price.

12                 The Government also points to the charge that  
13                 Scardino was told not to sell Pioneer stock, and that Howard  
14                 and Zuber was sent to recover money from McKibbin and Scardino  
15                 for selling against Sejal's wishes. The Government contends  
16                 that the evidence shows the alleged agreement and Howard's  
17                 and Zuber's awareness of this agreement. It is for you to  
18                 decide whether either of the charges are shown in the evidence.

19                 If you find there was such an agreement to sell  
20                 Pioneer stock in the West that would limit the supply of stock,  
21                 it is an "act, practice and course of business" which would  
22                 operate as a fraud or deceit" upon innocent investors in Pioneer  
23                 because it is designed to create and maintain an artificial  
24                 market.

25

JA1446

1 ms 7a

1287a

2 This law also prohibits making untrue state-  
3 ments of material facts and omitting to state material  
4 facts necessary to make statements made, in light of the  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ms8

circumstances, not misleading in connection with the purchase and sale of securities. What is left unsaid about a company is often just as important to an investor as what was said.

Count 1 also charges the defendants with conspiring to violate the Securities Act by selling unregistered stock of Pioneer and by schemes to defraud involving the use of interstate wires and the mails. We have discussed those facts earlier, and I will not repeat them here.

In order to convict a defendant on the conspiracy count, Count 1, the Government must prove to your satisfaction beyond a reasonable doubt each of the following three facts:

- (1) The existence of the conspiracy charged in the indictment;
- (2) That the defendant whom you are considering joined the conspiracy with knowledge of its unlawful purpose;
- (3) That at least one overt charged in the indictment was committed by any conspirator, whether or not a defendant on trial, during the existence of the conspiracy and in furtherance of its objects and purposes.

2                   The first element which you must determine is  
3 whether the conspiracy charged in the indictment existed.

4                   Now, what is a conspiracy?     A conspiracy, for  
5 our purposes, is simply a combination or an agreement among  
6 two or more people to accomplish an unlawful purpose as  
7 charged in the indictment.     The crime is complete when the  
8 unlawful agreement is made, whether or not any of the unlaw-  
9 ful purposes are ever accomplished.

10                  Here, whether or not a defendant actually  
11 violated the Securities Laws or the Mail Fraud Laws, the  
12 crime is complete once the illegal agreement is made and  
13 any member takes any step in furtherance of the purposes  
14 of the illegal agreement.     Thus, a conspiracy is a kind  
15 of a partnership in criminal purposes in which each member  
16 becomes the agent of every other member.

17                  The gist of the crime is the combination or  
18 agreement to violate the law.     This does not mean that  
19 two or more persons must meet and sign a formal agreement  
20 or that they must sit down and agree in so many words on  
21 what their unlawful scheme is to be or on how they are  
22 going to carry it out.     When persons enter into a  
23 combination or agreement to violate the law, much is left  
24 to implication and to tacit understanding.

25                  Conspirators do not loudly proclaim their plan

1 ms

JA1449

1290

2 or make public their purposes. The very nature of the  
3 conspiracy usually calls for secrecy in its origin and in  
4 its execution. Thus, it is sufficient if two or more  
5 persons in any manner or through any contrivance, impliedly  
6 or tacitly, knowingly come to a mutual understanding to  
7 accomplish a common and unlawful purpose.

8                 The first element, the unlawful agreement, is  
9 satisfied if you find beyond a reasonable doubt that at  
10 least two people, whether or not the two people are among  
11 the defendants now on trial, intentionally combined or  
12 agreed to violate the securities law and the mail fraud  
13 law.

14                 From the point of view of the law, there is  
15 danger to the public when two or more people combine to do  
16 something that is unlawful. Because of this, a conspiracy  
17 to commit a crime is in itself a distinct crime, separate  
18 and apart from the crime or crimes which it is the object  
19 of the conspiracy to accomplish. Thus, a conspiracy  
20 may be found to exist, although the purposes of the con-  
21 spiracy are never accomplished. Proof, however, of  
22 the accomplishment of the objective or purpose of the con-  
23 spiracy is the most persuasive evidence of the existence  
24 of the conspiracy itself.

25                 At this point I must remind you that the indict-

2 ment refers to one overall conspiracy covering the alleged  
3 sale of unregistered Pioneer stock over a 17-month period.

4 In order to prove one single conspiracy, the  
5 Government must show one common understanding or agreement  
6 linking the separate acts of various individuals together  
7 for the same unlawful purpose. The mere fact that all  
8 the defendants may not have been acquainted with each other  
9 or aware of all the details of the conspiracy or all of  
10 its operations, or participated in all of its transactions,  
11 does not mean that one overall conspiracy did not exist.  
12 Nor does the fact that a defendant may have changed roles  
13 within the conspiracy or joined at a different time or  
14 dropped out mean one overall conspiracy did not exist.

15 You should, therefore, consider all of the  
16 evidence bearing upon the agreement or understanding, if  
17 any, among the parties. If you find that instead of one  
18 overall conspiracy, there were separate and independent  
19 agreements unrelated to one central plan or scheme or  
20 common purpose, you must conclude that the Government has  
21 failed to prove the single conspiracy charged in its indict-  
22 ment and acquit all of the defendants. On the other hand,  
23 if you find that there was one common understanding or  
24 agreement linking the separate acts of various individuals  
25 together for the same unlawful scheme, plan and purpose,

1 ms

2 then you should find a single conspiracy. Such a con-  
3 spiracy may be shown to exist if you find, beyond a reasonable  
4 doubt, that two or more of the defendants in some way  
5 or manner came to a mutual understanding to accomplish the  
6 broad objectives set out in the indictment.

7 The counts of the indictment charge that the  
8 acts involved occurred on or about certain dates. It does  
9 not matter if a specific transaction is alleged to have  
10 occurred on or about a certain date and the testimony  
11 indicates that, in fact, if you find that it did occur, it  
12 was on another date. The law only requires a sub-  
13 stantial similarity between the dates alleged in the indict-  
14 ment and the date established in the testimony.

15 You will recall that the second element is that  
16 the defendant joined the conspiracy with knowledge of its  
17 unlawful purpose. When I say "joined the conspiracy,"  
18 I do not mean that the defendant has to file an application  
19 for membership. Before one can be found to be a con-  
20 spirator, however, he must know of the conspiracy and  
21 voluntarily and knowingly join in the venture with an  
22 intent to join with others in violating the law. He must  
23 knowingly promote or assist the scheme or have a stake in  
24 its outcome.

25 You will note that in describing the elements

of the crime, I have said that the defendant must have acted knowingly, wilfully and intentionally. You will also note that the indictment says the defendants acted unlawfully, wilfully and knowingly. This means that the defendant must have known what he was doing and that he consciously entered into the unlawful scheme, in short, that he must have guilty knowledge that he is joining with others to violate the law. I refer you to my earlier instructions on the subject of knowledge and wilfulness and charge you to apply them here.

The mere fact, however, that a defendant may be present at meetings, or unwittingly assists a venture without knowing its illegal purpose, or associate or have a friendship or innocent business dealings, or even conduct an isolated transaction in Pioneer stock with members of a conspiracy, is not, in itself, enough to make him a conspirator, unless you find beyond a reasonable doubt that he knew of the conspiracy and intentionally joined the venture with knowledge of its unlawful purpose and with a stake in its success.

In deciding whether a defendant joined the conspiracy, you must base your decision not on what others may have said or done, but only on what the defendant himself said or did. In other words, on the question of

2 membership in a conspiracy you can only consider a  
3 defendant's own actions, his own conduct, and his own  
4 statements.

5 If you find, however, that a defendant did join  
6 the conspiracy, then he is bound by what others and do  
7 in furtherance of the venture, even though he is not  
8 present. Each conspirator, you will remember, is the  
9 agent or partner of every other conspirator.

10 One who knowingly and wilfully joins an existing  
11 conspiracy is charged with the same responsibility as if  
12 he had been one of the originators. Those who come in  
13 later with knowledge of the aims and purposes of the con-  
14 spiracy and cooperate in a common effort to obtain the  
15 unlawful result become parties to the conspiracy. All  
16 the conspirators need not be acquainted with each other.  
17 They may not have previously associated together. They  
18 may not know the identity of the other parties. One may  
19 become a member of a conspiracy without knowledge of all  
20 of the details or all of the operations of the conspiracy.  
21 One defendant may know only one other member of the con-  
22 spiracy, yet if he knowingly cooperated to further the  
23 illegal object of the conspiracy, with knowledge that  
24 others have combined to violate the law, he becomes a  
25 member, although his role may be only an insignificant or

2 subordinate one.

3 You will recall that the third element of the  
4 crime is the commission by any conspirator of at least one  
5 overt act in furtherance of the objects of the conspiracy.

6 "Overt Act" means an act committed or caused to  
7 be committed by any member of the conspiracy in an effort  
8 to accomplish some object or purpose of the conspiracy.  
9 The reason the law requires an overt act is because a  
10 person might agree to commit a crime and then change his  
11 mind. Therefore, before a defendant can be convicted of  
12 a conspiracy, one or more of the conspirators must have  
13 taken at least one step or performed one single act which  
14 moved directly toward carrying out the unlawful intent to  
15 commit the crime.

T4-4 16 The Government in the indictment here alleges  
17 five overt acts, which you will read, Mr. Barrett.

18 THE CLERK: "IV. Overt Acts

19 "4. In furtherance of the said conspiracy and  
20 to effect the objects thereof, the defendants and  
21 their co-conspirators committed the following overt  
22 acts in the Southern District of New York and else-  
23 where:

24 "(1) In or about October 24, 1969, the  
25 defendant Segal transported approximately 111,000

2 shares of Pioneer stock to New York, New York.

3                 "(2) On or about October 28, 1969, the  
4 defendant Azzcerone signed an application form with  
5 the National Quotation Bureau ('Pink Sheets') to  
6 quote Pioneer at \$5 bid and \$6 asked.

7                 "(3) On or about October 31, 1969, the defendant  
8 Segal caused 20,000 shares of Pioneer stock to be  
9 delivered to Orvis Brothers & Co., New York, New York  
10 for sale.

11                 "(4) On or about November 7, 1969, the defendant  
12 Scardino flew to Tucson, Arizona with a stock  
13 certificate.

14                 "(5) On or about November 10, 1969, the  
15 defendant McKibbon flew to Denver, Colorado with a  
16 stock certificate.

17                 "(6) On or about November 18, 1969 the defendants  
18 Scardino and McKibbon went to a broker in Denver,  
19 Colorado to pick up proceeds of a sale of Pioneer  
20 stock.

21                 "(7) On or about December 10, 1969, the defendant  
22 McKibbon delivered 18,000 shares of Pioneer stock  
23 to a broker in Denver, Colorado for sale.

24                 "(8) In or about December 1969, the defendant  
25 Levine made false and misleading statements in connec-

2 tition with Pioneer in New York, New York.

3 "(9) In or about the end of December, 1969  
4 or early January, 1970, the defendant Clegg in Los  
5 Angeles, California had a long distance telephone  
6 conversation with the defendant Segal in New York,  
7 New York.

8 "(10) In or about the end of December, 1969  
9 or early January, 1970, the defendants Acton, Howard,  
10 McKibbon, Scardino and Zuber met at the Holiday Inn  
11 In Reno, Nevada.

12 "(11) On or about January 10, 1970, the defend-  
13 ants Acton, Howard and Zuber delivered 6900 shares of  
14 Pioneer stock to Allen Grant in New York, New York.

15 "(12) On or about February 24, 1970, the defend-  
16 ant Howard delivered 10,000 shares of Pioneer stock to  
17 Michael Karfunkel in New York, New York.

18 "Each of the mailings and interstate wire communi-  
19 cations alleged in Counts 5 through 46 of this indict-  
20 ment are repeated and realleged herein as overt acts."

21 THE COURT: The Government must prove to you  
22 beyond a reasonable doubt that at least one of the overt  
23 acts just read to you was committed by one or more of the  
24 conspirators whether or not the conspirator who committed  
25 the overt act is a defendant now on trial, and that the

1 ms

JA1457

1298

2 act was done in furtherance of the conspiracy and in the  
3 Southern District of New York, and for our purposes the  
4 Island of Manhattan suffices as the Southern District of  
5 New York, although it extends beyond that.

6 In this connection, you need not find that all  
7 the defendant committed an overt act, or that all of the  
8 overt acts were committed. One overt act by any one  
9 member of the conspiracy, whether or not such a member is  
10 a defendant, is sufficient.

11 You must consider each defendant separately.  
12 If you find that the Government has failed to prove each  
13 of the three elements of the crime of conspiracy beyond a  
14 reasonable doubt as to the defendant whom you are consider-  
15 ing, then you should return a verdict of not guilty as to  
16 that defendant on Count 1. On the other hand, if you  
17 find that the Government has proved all three elements of  
18 the crime of conspiracy beyond a reasonable doubt as to the  
19 defendant whom you are considering, then you should return  
20 a verdict of guilty as to that defendant on that count.

21 Now that I have instructed you on the law of  
22 conspiracy, there is another alternative basis upon which  
23 you may convict a defendant on Counts 2 through 14, 16  
24 through 19, 21 through 23, 28 through 30, 32 through 34,  
25 37, 39 through 41, and 43 through 45, even if you find

2 that the defendant whom you are considering did not personally  
3 commit the crime charged in each of those counts.

4 Remember, I told you that once a defendant knowingly joins  
5 a conspiracy, he is responsible for all the acts of the  
6 other members of the conspiracy done during the existence  
7 of and in furtherance of the conspiracy.

8 Therefore, if you find beyond a reasonable doubt  
9 that the offenses charged in each of those counts were com-  
10 mitted by another person or persons who was a member of  
11 the alleged conspiracy, that the defendant under consider-  
12 ation by you was then also a member of that conspiracy,  
13 that the acts which constituted those offenses were done in  
14 furtherance of that conspiracy, and that the defendant  
15 might reasonably have foreseen that those acts would be  
16 done, then you may find that defendant guilty of the crimes  
17 charged in Counts 2 through 14, 16 through 19, 21 through  
18 23, 28 through 30, 32 through 34, 37, 39 through 41, and  
19 43 through 45.

20 Obviously, as I told you earlier, you will have  
21 to consider each defendant and each count separately in  
22 this connection, as well as in all others. Even though  
23 the defendant whom you are considering did not otherwise  
24 personally participate in the acts constituting those  
25 offenses or did not have knowledge of them, he can be

2 found guilty of the crime if the acts were done in further-  
3 ance of the objectives of the conspiracy of which he was a  
4 knowing member.

5 You must consider each defendant and each count  
6 separately.

7 With respect to Counts 2 through 14, 16 through  
8 19, 21 through 23, 28 through 30, 32 through 34, 37, 39  
9 through 40, and 43 through 45, if you find as to the count  
10 that you are considering that the Government has failed  
11 to prove beyond a reasonable doubt as to the defendant  
12 whom you are considering any of the elements of the crime  
13 charged in that count as I have defined them, and has failed  
14 to prove that the crime was committed by another member or  
15 members of the conspiracy in furtherance of the purposes of  
16 the conspiracy of which the defendant whom you are con-  
17 sidering was a member, and has failed to prove that the  
18 defendant whom you are considering aided and abetted the  
19 commission of the crime by another, then you should find  
20 that defendant not guilty on that count.

21 On the other hand, if you find as to the count  
22 which you are considering that the Government has proved  
23 beyond a reasonable doubt as to the defendant you are con-  
24 sidering, each of the elements of the crime charged in that  
25 count as I have defined them, or has proved that the crime

1 ms

JA1460

1301

2 was committed by a member or members of the conspiracy of  
3 which the defendant whom you are considering was a member,  
4 or has proved that the defendant whom you are considering  
5 aided and abetted the commission of the crime by another,  
6 then you should find that defendant guilty on that count.

7 You are instructed that the question of possible  
8 punishment of a defendant in the event of conviction is no  
9 concern of yours and should not in any sense enter into or  
10 influence your deliberations. The duty of imposing  
11 sentence in the event of a conviction rests exclusively upon  
12 the Court. The function of the jury is to weigh the  
13 evidence in the case and determine the guilt or innocence  
14 of the defendant solely upon the basis of such evidence.

15

16

17

18

19

20

21

22

23

24

25

T5 2            When you retire to the jury room, treat one  
3 another with consideration and respect, as I know you will.  
4 If differences of opinion arise, your discussion should  
5 be dignified, calm, intelligent. Your verdict must be  
6 based on the evidence and the law, the evidence which was  
7 presented in this case, as you remember it, and the law  
8 as I have given it to you in this charge.

9                Now, in that connection, there are a number of  
10 exhibits here and the court will send them in to you as  
11 soon as we are able to assemble them, after you have  
12 retired.

13              There has been some suggestion here that you  
14 could have testimony read to you if you want, and you may.  
15 If you want some testimony, the court will direct the  
16 court reporter to read it to you. But exercise some  
17 restraint in that matter. You should try to remember the  
18 evidence. If you can't remember it, perhaps one of your  
19 fellow jurors can, and he can refresh your recollection on  
20 it. But, if in the end you feel that you must have some  
21 evidence read to you, some testimony read to you, send  
22 a note through your foreman, and please try to pinpoint  
23 what you want, because you must hear the evidence, the  
24 testimony both on direct and on cross-examination that  
25 pertains to the subject in which you are interested.

1            jkh 2

2            Now, you are each entitled to your own opinion,  
3            no juror should acquiesce in a verdict against his or her  
4            individual conscientious judgment. Nevertheless, I would  
5            point out that no one should enter the jury room with such  
6            pride of opinion that no matter how convincing the argument  
7            of a fellow juror or jurors he would refuse to change  
8            his mind.

9            Discussion and deliberation are the very heart  
10          of our democratic and jury process, and your deliberations  
11          should be approached in that spirit. Talk out your  
12          differences. Each of you should, in effect, decide the  
13          case for himself after thoroughly reviewing the evidence  
14          and frankly discussing it with your fellow jurors, with  
15          an open mind and with a desire to reach a verdict.

16          If you do that, you will be acting in the true,  
17          democratic process of the American jury system.

18          There are 12 of you on this jury. The alternates  
19          will be excused with the thanks of the court before you  
20          retire for your deliberations. Any verdict must be the  
21          unanimous verdict of all of you as to each defendant on  
22          each count, and it must represent the honest conclusion of  
23          each of you.

24          I submit the case to you with every confidence  
25          that you will fully measure up to the oath which you took

1 jkh3

2 as members of the jury, to decide the issues submitted  
3 to you fairly and impartially and without fear or favor.

4 Now, members of the jury, if you find that the  
5 government has failed to establish the guilt of any defendant  
6 beyond a reasonable doubt, that defendant should be acquitted.  
7 If you find that a defendant has not violated the law,  
8 you should not hesitate for any reason to render a verdict  
9 of not guilty as to him.

10 But, on the other hand, if you find that the  
11 government has established the guilt of a defendant beyond  
12 a reasonable doubt, you should not hesitate because of  
13 sympathy or any other reason to render a verdict of guilty.

14 I will give your foreman a form for returning your  
15 verdict, and you will write -- it is simply a line as to  
16 each defendant on each count -- either guilty or not guilty,  
17 and then you will bring it with you in open court.

18 Are there any exceptions, gentlemen? If so,  
19 I will hear you at the side bar.

20 MR. DOYLE: I have some, your Honor.

21 (At side bar.)

22 THE COURT: Let's try to go in order and let's  
23 try not to be repetitive. All right.

24 MR. DOYLE: Your Honor, I take exception to  
25 that portion of your Honor's charge in which your Honor

1 jkh1

2 stated the government's contention that there was an  
3 agreement not to sell without also stating the defendant  
4 Segal's contention that there was no agreement not to sell,  
5 particularly in light of the misleading statement made in  
6 the government summation that I had not addressed myself  
7 to that issue when, in fact, it is a hotly contested issue  
8 in the case.

9 (Open court.)

10 THE COURT: I neglected to charge you that the  
11 defendants assert and allege that there was no agreement  
12 and contend that there was no agreement not to sell in the  
13 west.

14 (Side bar.)

15 MR. DOYLE: Thank you, your Honor.

16 MR. KIRSCHNER: With respect to that, your Honor,  
17 we would request that the jury be instructed that if they  
18 do believe that there was an agreement not to sell, that  
19 defendant Zuber must have known the reason for the agreement,  
20 which was that that agreement was to deflate, depress the  
21 stock.

22 THE COURT: No, I note your exception and decline  
23 to grant that request. I think I have covered that adequately.  
24 It is a very technical subject. If we just start shooting  
25 from the hip on it the odds are strong that you make a

ikh5

JA1465

1306

mistake.

MR. KIRSCHNER: In addition, you left out the words in the accomplice instruction and said, "If you believe the testimony of an accomplice, that is sufficient to convict," without indicating "belief beyond a reasonable doubt."

THE COURT: You don't have to believe it beyond  
a reasonable doubt. That is not the law.

MR. KIRSCHNER: We would also renew our request that defendant Zuber is not being charged here with possession of a gun as the court indicated with respect to those

THE COURT: I will charge them on that.

(Open Court.)

THE COURT: Lest there be some confusion, the defendant Zuber is not charged here with possession of a gun. That testimony relating to the gun bore only on whether there was an overt act by Zuber in furtherance of the objects of the conspiracy.

(Side bar - 1)

THE COURT: Is that satisfactory?

MR. KIRSCHNER: Yes, your Honor.

In addition, with respect to the instruction on the mail fraud, the court indicated that participation

JA1466

1307

1 jkh6

2 in the mail fraud situation could be done knowingly and  
3 I believe the court omitted the word "wilfully" with  
4 respect to the mail fraud.

5 THE COURT: I don't think I did. If I did, I note  
6 your exception. Certainly the subject of wilfulness is  
7 all over the charge.

8 MR. KIRSCHLER: In addition, your Honor, we would  
9 take exception to the end of the court's charge with  
10 respect to the Pinkerton problem that we had discussed  
11 before, liability for substantive offenses committed prior  
12 to joining.

13 THE COURT: I note your exception.

14 MR. DOYLE: Judge, there is one other problem.  
15 I am advised by my client that some of the jurors stated  
16 that they didn't hear your Honor's first statement to the  
17 jury that you made from over here at the side bar about  
18 our contentions, so perhaps the reporter could read it to  
19 the jury to make sure they heard it. Some jurors indicated  
20 they didn't hear it.

21 (Open court.)

22 THE COURT: The first thing I told you since we  
23 have been at the side bar, I didn't tell you that the  
24 defendants contend that there was no agreement between  
25 Clegg and Acton not to sell in the west or even if there

JA1467

1 jkh7

2 were such an agreement, that they did not know of its  
3 existence. That is their contention. Whether that is so  
4 is for you to decide.

5 (Side bar.)

6 THE COURT: Any others?

7 MR. GREENBERG: Your Honor, I think it was covered  
8 by Mr. Kirschner, but out of an abundance of caution, we  
9 want to take exception to that portion of the charge which  
10 basically summarized that the government's version, the  
11 government's contention is that the facts show that Zuber  
12 had knowledge of the purposes of the conspiracy when he  
13 joined it, without our statement to the effect that the  
14 defendant Zuber has the contention that he did not have  
15 knowledge of the purpose of the conspiracy when he is  
16 alleged to have joined it.

17 THE COURT: I deny it. Note your exception.

18 MR. NEWMAN: For the record, I except to those  
19 portions of the charge that counsel for defendant Zuber  
20 objected to as they relate to defendant Finkelstein.

21 THE COURT: Note your exception.

22 MR. PAPE: For the purpose of the record I also  
23 join.

24 THE COURT: Note your exception.

25 (Open court.)

Jkh7a

2 THE COURT: The alternates are excused.

3 Swear the marshal.

4 (Marshal sworn.)

5 THE COURT: I will send two copies of the in-  
6 dictment in because I know you work on opposite sides of  
7 the table.

8 (Jury retired at 4:30 P.M.)

11 ONLY COPY AVAILABLE

12

13

14

15

16

17

18

19

20

21

22

23

24

25

2 MR. GREENBERG: May I make inquiry as to the  
3 hours the court will be sitting?

4 THE COURT: You will have to ask the man upstairs.  
5 I don't know. Only he knows what they are going to do.

6 We will just have to see how it goes. I don't know.  
7 The jury may be in -- they may be in in half an hour. Who  
8 knows? Or they may be out until 10 o'clock. They may give  
9 us a bar exam. You never know what juries are going to do.  
10 We will have to see how it goes.

11 I obviously don't intend to sit all night, but  
12 I would sit reasonably late, and if they are too late,  
13 we will have to sequester them for the night.

14 MR. NEWMAN: If your Honor please, may I have  
15 permission to be in the 25th floor in the library, in this  
16 building?

17 THE COURT: Mr. Barrett, can you telephone the  
18 25th floor from here? Are you able to? That is all I want  
19 to know, in the library?

20 THE CLERK: Yes.

21 THE COURT: Can you telephone the library on the  
22 25th floor?

23 THE CLERK: Yes.

24 THE COURT: Yes, you may.

25 MR. NEWMAN: Thank you, your Honor.

1 jkh9

2 MR. PAPE: May I also, your Honor?

3 THE COURT: Yes. What time does the marshal want  
4 to take them out to dinner?

5 THE CLERK: You have to make arrangements, 6, 6:30.

6 THE COURT: Well, the clerk will know when they go  
7 out. You have have to check with him. All right?

8 MR. PAPE: Yes, sir.

9 THE COURT: I would send them out probably  
10 6 or 6:30, whatever the marshal says on that, but I wouldn't  
11 be out longer than an hour, an hour and 15 minutes, if I  
12 were you. I would like you to be around because heaven  
13 knows what they may ask in this case.

14 I must say, gentlemen, it was a very pleasant  
15 trial and a difficult case, and it has been a long while  
16 since I have had across the board such fine lawyers on all  
17 sides. It was just great.

ONLY COPY AVAILABLE

18 MR. KIRSCHNER: Thank you, your Honor.

19 MR. DOYLE: Thank you, your Honor.

20 MR. PAPE: Thank you.

21 MR. WALKER: Thank you, your Honor.

22 (Recess.)

23 (In robing room.)

24 THE COURT: One of the jurors says she has a young  
25 child at home and has no one to care for her. We will have

1 jkh10

JA1471

1311

2 to see if we can get one of the alternates.

3 (Pause.)

4 THE COURT: Is it all right with everyone if  
5 we move her over?

6 MR. WALKER: Can we talk to her?

7 THE COURT: Ask the juror who has the problem  
8 to come in here.

9 (Pause)

10 (Junior number 2 in robbery room.)

11 THE COURT: What is your problem, Miss?

12 JUROR NO. 2: My problem is that I have a daughter  
13 coming home from school just about now. She is nine and a half.  
14 Usually she stays home for a half hour to an half until  
15 I come home. My husband is out in Brookhaven, Long Island,  
16 and he won't be home. It is impossible for him to be home  
17 before 11 o'clock at night.

18 It is possible, however, for me to try to make  
19 a number of phone calls to some people in my apartment  
20 building to see if they can take over.

21 THE COURT: You surely can do that, because we  
22 all would like to keep you on the jury.

23 Could you make those right away?

24 JUROR NO. 2: I will make those right away and  
25 see what I can do. Okay?

1 jkh11

2 THE COURT: All right. The marshal will take  
3 you to a telephone where you can call, and let us know.

4 JUROR NO. 2: Immediately.

5 THE COURT: Thank you.

6 (Pause.)

7 THE COURT: Gentlemen, she says it is all right,  
8 so you are covered, and you will take your time and reach  
9 a just result.

10 JUROR NO. 2: Yes.

11 THE COURT: All right.

12 (Recess.)

13

14 ONLY COPY AVAILABLE

15

16

17

18

19

20

21

22

23

2 (The jury was taken to dinner at 6.15 p.m. and  
3 returned to continue its deliberations at 7.45 p.m.)

4 (At 8.20 p.m. the following took place in the  
5 robing room.)

6 THE COURT: I have a note from the jury which  
7 reads:

8 "Your Honor:

9 "The jury would like to hear once again your  
10 explanation of Count 1, the conspiracy, as to its  
11 descriptive meaning (as it relates to the other  
12 counts).

13 "The jury

14 "D. Allen."

15 Do we all agree, gentlemen, that that is the  
16 Pinkerton charge?

17 MR. DOYLE: Yes.

18 MR. WALKER: Yes.

19 THE COURT: I will give them that.

20 MR. GREENBERG: We will take a continuing  
21 exception to that, your Honor.

22 THE COURT: Yes.

23 MR. GREENBERG: Thank you.

24 (Proceedings continued in the courtroom.)

25 THE COURT: Before we do this, is it all right

ONLY COPY AVAILABLE

1 if I read it from my notes, rather than the court reporter  
2 looking back and finding exactly where that is?

3 Any objection to that?

4 MR. DOYLE: No.

5 MR. WALTERS: No objection by the Government,

6 your Honor.

7 (The jury took its place in the jury box at  
8 8:25 p.m.)

ONLY COPY AVAILABLE

9 THE COURT: I have your note, and I think this  
10 is what you want. If it is not, you will have to send  
11 me another note and tell me.

12 Now that I have instructed you on the law of  
13 conspiracy, there is another alternative basis upon which  
14 you may convict a defendant on Count 2 through 14, 16  
15 through 19, 21 through 23, 28 through 30, 32 through 34,  
16 37, 39 through 41, and 43 through 45, even if you find  
17 that the defendant whom you are considering did not  
18 personally commit the crime charged in each of those  
19 counts.

20 Remember, I told you that once a defendant knowingly joins a conspiracy, he is responsible for all the  
21 acts of other members of the conspiracy done during the  
22 existence of and in furtherance of the conspiracy.

23 Therefore, if you find beyond a reasonable

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
ms.

doubt that the offenses charged in each of those counts  
were committed by another person or persons who was a  
member of the alleged conspiracy that the defendant under  
consideration by you was then also a member of that con-  
spiracy, that the acts which constituted those offenses were  
done in furtherance of that conspiracy, and that the defendant  
might reasonably have foreseen that those acts would be done,  
then you may find that defendant guilty of the crimes charged  
in Counts 2 through 14, 16 through 19, 21 through 23, 28  
through 30, 32 through 34, 37, 39 through 41, and 43 through

45.

### ONLY COPY AVAILABLE

Obviously, as I told you earlier, you will have  
to consider each defendant and each count separately in  
this connection, as well as in all others. Even though  
the defendant whom you are considering did not otherwise  
personally participate in the acts constituting those  
offenses or did not have knowledge of them, he can be  
found guilty of the crime if the acts were done in further-  
ance of the objectives of the conspiracy of which he was  
a knowing member.

If that is not what you want, send me a note and  
see if you can pinpoint it a little more carefully.

THE FOREMAN: That is it. Thank you.

(The jury retired at 8:35 p.m. to continue its

deliberations.

(Note: A jury was marked Court's Exhibit 1.)

(At 10:00 p.m. the following took place in  
the robing room.)

THE COURT: We have a note:

"Your Honor, Acton's testimony as to the meeting  
between Zuber, Howard, McKibbon, Scandino at Holiday  
Inn, Reno, Nevada, on December '69.

"2. Karfunkel testimony re Howard selling of  
10,000 shares of stock on 2/4/70, plus the exhibit  
and check endorsed by Howard.

"3. Reading by stenographer about the  
description of the law on Count 1 of conspiracy."

I am open to suggestion as to what that means.  
It obviously does not mean what I just read them. They  
want to know what is a conspiracy.

MR. PAPE: I think they want the entire con-  
spiracy charge.

THE COURT: Do you want to see if you can agree  
on what is to be read from the transcript and I will have  
the stenographer read it. The conspiracy charge is pretty  
long and it will take half an hour.

MR. GREENBERG: May I make a suggestion?  
It is 10 o'clock. Why don't we look over the transcripts

tonight and see if we can't agree on something so they can get it in the morning.

THE COURT: I don't want to sequester them if I don't have to. That is the problem. I plan to ask them whether they want to go to a hotel should that be necessary. They have had a long, hard day. They may want to deliberate further at this time.

Does anyone object to having them sequestered?

MR. WALKER: I want to have them sequestered.

THE COURT: This case is one that I don't wish to run any risk on. I would have to sequester them. This is not a one-day case concerning theft from the mails.

MR. KIRSCHNER: We would object to their being sequestered. We would like to make a record of that.

THE COURT: You can make your objection. Either you have an objection or you don't. If you have an objection, what is it?

MR. KIRSCHNER: We have an objection.

THE COURT: Why?

MR. KIRSCHNER: On the ground that sequestration tends to force them into a verdict more quickly than they would normally and it pressures them.

THE COURT: I wouldn't think so. But, in any event, they will be sequestered if necessary.

2                   First I would like to ask them whether they  
3                   want to work longer or what they wish to do.

4                   We will read the conspiracy charge and those  
5                   portions that they have requested there. See if you can  
6                   agree on that.

7                   (Short recess.)

8                   THE COURT: What is your problem?

9                   MR. WALKER: When a jury asks for the testimony  
10                  of Acton as to the meeting in Reno, it is the Government's  
11                  position the meeting itself must be set in the context of  
12                  the trip to Reno, and that the testimony as to the trip,  
13                  which is not much longer, should be read, pages 147, line  
14                  21 to page 157, line 11, just ten pages.

15                  MR. KIRSCHNER: We say page 154 is where the  
16                  meetings begins. The prosecution wishes that we go  
17                  into the transactions that occurred before the meeting.

18                  THE COURT: I think it starts at 149:

19                  "Mr. Zuber said that we got to get the stock  
20                  situation straightened out; we have to go to a  
21                  meeting and get it straightened out."

22                  I think that is where it starts.

23                  Do you agree on where it ends?

24                  MR. WALKER: We agree on where it ends.

25                  MR. SIFFERT: The Government says 157, line 11;

1 ms

1319

2 the defendant says 156, line 6.

3 THE COURT: I think the Government is right on  
4 this one. It is still part of the meeting; it is a  
5 different place. It is all that one meeting in Reno.6 MR. PAPE: As to cross, page 270, line 4 to  
7 page 271, line 1.

8 THE COURT: Have you checked it, Mr. Walker?

9 MR. WALKER: Yes.

10 THE COURT: Do you agree?

11 MR. WALKER: We don't agree that it should go to  
12 271, line 4, which is the question:13 "Have you ever known Mr. Scardino to carry a  
14 gun."15 We are willing to take it to line 2 of that  
16 page.17 MR. PAPE: The reason I think the question whether  
18 Mr. Scardino carried a gun is relevant to the Reno meeting,  
19 your Honor, is because there is testimony that Mr. Scardino  
20 said he needs no protection.

21 THE COURT: We will take it through line 4.

22 MR. SIEFFERT: And the Exhibit number is Exhibit  
23 61-B.24 MR. WALKER: As to Karfunkel, it is page 904,  
25 line 11 to page 910, line 7, and cross is 903, line 18 to

2 line 23.

3 THE COURT: We will bring the jury in.

4 (At 10.40 p.m. proceedings continued in the  
5 courtroom with the jury in the box.)

6 THE COURT: I want to say to you it is now  
7 twenty minutes of eleven, and, of course, there are a  
8 number of ladies on the jury. We are not able to get  
9 limousines to take you to your homes, so the Court is going  
10 to sequester the jury in a hotel for the night. I have  
11 already ordered a bus to take you there. It will be some  
12 time before the bus arrives; it has to come from Kennedy  
13 Airport. Do you can work until the bus comes, and I will  
14 advise you at that point.

15 We have your note and we have the testimony and  
16 that part of the charge that you want.

17 (Portions of the testimony and the charge were  
18 read by the court reporter.)

19 THE COURT: You will be at the Sheraton Motel,  
20 on 42nd Street and 12th Avenue.

21 When you leave the Court House don't talk about  
22 the case even amongst yourselves. In the morning when  
23 you are all in the jury room you may resume your deliber-  
24 ations.

25 (The jury retired at 11.15 p.m. to continue its

2 deliberations.)

3 THE COURT: We all better remain until the bus  
4 actually comes to get them.

5 MR. GREENBERG: Your Honor, what time do you  
6 want us back here in the morning?

7 THE COURT: 10 o'clock.

8 MR. GREENBERG: May we have our continuing  
9 exception to that portion of the charge previously made?

10 THE COURT: I don't think you need to do that.  
11 I think the record is clear.

12 (At 11.30 p.m. the jury was taken to the  
13 motel and an adjournment was taken to Thursday,  
14 December 12, 1974, at 10.00 o'clock a.m.)

15 ---

16

17

18

19

20

21

22

23

24

25

TRANSCRIPT OF PROCEEDINGS BEFORE MacMAHON, 1322  
1 jkh D.J., ON DECEMBER 12, 1974

2 UNITED STATES OF AMERICA

3 vs.  
HOWARD FINKELSTEIN, et al.4 December 12, 1974,  
5  
10 A.M.

6 --

7 (Jury continued their deliberations.)

8 (Note received from jury at 10:45 A.M.)

9 (Open court; jury not present.)

10 THE COURT: Is there something you wanted to  
11 stipulate, Mr. Walker?12 MR. WALKER: Yes, your Honor. I would like to  
13 stipulate with defense counsel that at last evening's  
14 session, when the court was responding to a note of the  
15 jury and asked the court reporter to read back the conspiracy  
16 charge, specifically as the court reporter read back that  
17 portion of the conspiracy charge which related to the  
18 Rule 10(b)5, object of the conspiracy, and stated that  
19 the government's contention was that there was, in effect,  
20 an agreement not to sell in the west and that if they found  
21 such an agreement to have taken place that that would  
22 constitute a violation of Rule 10(b)5, that at that point  
23 the court stopped the court reporter from reading the  
24 charge and stated the defendants' contention, which was that  
25 there was no agreement not to sell in the west.

1 jkh2

2 THE COURT: If there were, the defendants did  
3 not know about it.

4 MR. WALKER: And if there were, the defendants  
5 did not know about it.

6 THE COURT: And you will recall the supplemental  
7 instruction that I gave to the jury after I had given the  
8 charge in chief to that effect; is that correct, Mr. Doyle?

9 MR. DOYLE: That's correct, your Honor.

10 MR. WALKER: That's correct.

11 MR. GREENBERG: Your Honor, may the record also  
12 reflect that the Pinkerton portion of the charge was also  
13 read to the jury.

14 THE COURT: Yes, surely.

15 MR. GREENBERG: Thank you.

16 THE COURT: And the record will also reflect  
17 that one of the jurors specifically asked that it be con-  
18 tinued. Is that so?

19 MR. GREENBERG: Yes, sir.

20 MR. KIRSCHNER: Yes, your Honor.

21 MR. GREENBERG: I believe it was juror number 2,  
22 your Honor.

23 THE COURT: I thought it was number 3, but I  
24 don't remember. The young lady.

25 All right.

1 jkh3

2 (Jury present.)

3 THE COURT: Good morning. I can tell by looking  
4 at you you have been working very hard.

5 I have your note.

6 "If the jury finds a defendant guilty of conspiracy,  
7 is he then automatically guilty on all other counts?"

8 The answer is no, not automatically guilty.

9 He can be guilty on the other substantive counts if you  
10 find that the defendant whom you are considering did not  
11 personally commit the crime charged in each of those  
12 substantive counts. But remember I told you that once a  
13 defendant knowingly joins in a conspiracy, he is responsible  
14 for all of the acts of other members of the conspiracy  
15 committed during the existence of and in furtherance of  
16 the objects of the conspiracy.

17 Therefore, if you find beyond a reasonable doubt  
18 that the offenses charged in each of these what we have  
19 referred to as substantive counts were committed by another  
20 person or persons, who was a member of the alleged conspiracy,  
21 that the defendant whom you are considering was then also  
22 a member of that conspiracy, and that the acts which con-  
23 stituted those offenses were done in furtherance of that  
24 conspiracy and that the defendant might reasonably have  
25 foreseen that those acts would be done, then you may find

1 jkh4

2 that defendant guilty of the crimes charged in all the  
3 counts of this indictment except the conspiracy count.

4 Well, you have to consider the conspiracy count separately,  
5 but in all the other counts of the indictment. That is  
6 because one member of a conspiracy is a partner of every  
7 other member of it, and if any member of the conspiracy  
8 commits a crime in the course of the conspiracy and in  
9 furtherance of its objectives and during the existence of  
10 the conspiracy, the non-present member that you are considering  
11 is equally guilty of that crime, provided he could have  
12 foreseen that that crime would be committed in the course  
13 of the conspiracy.

14 Now, your next question: "If the jury finds  
15 a defendant not guilty of conspiracy but finds him guilty  
16 on some counts, is he then automatically guilty of con-  
17 spiracy?"

18 Answer, an unequivocal no. No. No. There isn't  
19 any question about it. No.

20 Now, the third question: "If the jury finds  
21 a defendant not guilty of conspiracy, can it find him  
22 guilty on other counts?"

23 The answer is yes. Can find him guilty on other  
24 counts if, one, he personally committed that crime charged  
25 in that count or, two, if he aids and abets another person

1 jkh5

2 to commit that crime.

3 All right?

4 THE FOREMAN: Thank you, your Honor.

5 JUROR NO. 2: Thank you very much.

6 THE COURT: Do you need the note?

7 THE FOREMAN: Yes.

8 THE COURT: All right. Would you return it to me  
9 at the end of the case so we can make it a part of the  
10 record?

11 THE FOREMAN: Yes, your Honor. Thank you.

12 THE COURT: All right.

13 (Jury retired at 11:05 A.M.)

14 (Recess)

15 (Open court; jury not present; 11:30 A.M.)

16 THE COURT: It is just a clarification I have  
17 to make. I instructed them wrongly with respect to counts  
18 2 through 16 where the only defendants named are those  
19 named in that count. You can't be convicted if you are not  
20 named in a count.

21 (Jury present.)

22 THE COURT: In my last instruction to you, it  
23 has an error in it that I must correct.

24 I told you that you could find any defendant  
25 guilty of any of the substantive crimes if you found either

1 || jkh6

1327

2 that he aided and abetted or that both that defendant  
3 and the one who committed the crime were members of  
4 a conspiracy, and it was committed, and so on.

You will notice in the form for a verdict that I gave you that starting with count 2 and running through count 10 there is only one line and one defendant, and you can only find on those counts as to the named defendant.

10 Now, the reason for that is that the other  
11 defendants are not named in any of those counts as aiders  
12 and abettors nor are they charged under the conspiracy  
13 theory in those counts with being guilty of those crimes.

18 All right?

19 THE FOREMAN: Thank you.

20 (Jury retired at 11:35 A.M.)

1 jkh 1

1 p.m. 2 (Note received from jury at 2:05 P.M., marked  
3 Court Exhibit 4.)

4 (Open court; jury not present.)

5 MR. SIFFERT: We have a note from the jury.

6 It says: "Your Honor, we need to see in the jury room  
7 the five large exhibits which show the sale of stock and  
8 how the proceeds were distributed. The jury."

9 Counsel for the government believes, and I  
10 believe that all defendants' counsel stipulate that that  
11 means Government's Exhibits 146, 151A, 151C, 147 and 151B.

12 Is that the understanding of all counsel?

13 MR. PAPE: It is.

14 MR. DOYLE: That is agreeable to counsel for  
15 Mr. Segal.

16 MR. KIRSCHNER: And it is agreeable to counsel  
17 for Mr. Zuber.

18 MR. NEWMAN: And Finkelstein.

19 (Exhibits sent in to the jury room.)

20 (Recess.)

21 (Note received from the jury at 3:15 P.M. reading,  
22 in part, "Your Honor, we would like to see the following  
23 exhibits: The documents which cover counts number 33, 37,  
24 39.")

25 (Note marked Court Exhibit 5.)

1 jkh?

2 (In robing room.)

3 THE COURT: This note also has another question  
4 on it: "Is Mr. Karfunkel connected with Economic Planning  
5 Company on stock he allegedly purchased Mr. Finkelstein  
6 Bob Howard? The jury."

7 MR. WALKER: I think the record is silent on  
8 that particular point. The record is clear that Mr. Karfunkel  
9 was associated with Economic Planning in connection with  
10 the directed trade. The record is silent as to in what  
11 capacity he was acting when he purchased the stock from  
12 Robert Howard. However, the checks show that there were  
13 payments made for that stock by Karfunkel himself as opposed  
14 to Economic Planning. That is a possible inference, but  
15 the checks speak for themselves. My suggestion would be  
16 that--

17 THE COURT: Unless the answer is clearly no,  
18 then it is for the jury's recollection, their recollection  
19 of the evidence. "If you want any evidence read or any  
20 exhibits, tell them."

21 MR. WALKER: I agree.

22 THE COURT: Isn't that it?

23 MR. NEWMAN: I don't see why not. I don't  
24 remember if it came out. Any of you fellows remember  
25 if it came out?

1 jkh3

2 Any of you fellows remember if it came out?

3 MR. KIRSCHNER: I don't recall.

4 MR. GREENBERG: Now is it phrased, your Honor?

5 Is it connected with --

6 THE COURT: There it is.

7 MR. GREENBERG: "Is Mr. Karfunkel connected  
8 with Economic Planning Company on stock he allegedly  
9 purchased Mr. Finkelstein-Bob Howard?"

10 MR. WALKER: The jury's recollection controls  
11 on that. They are not asking for any specific testimony.

12 THE COURT: I will tell them that. It is your  
13 recollection of the evidence that controls.

14 MR. WALKER: It is a purely factual matter.

15 THE COURT: If you want any testimony reread  
16 in connection with your question, tell me what you want.  
17 All right?

18 MR. WALKER: Your Honor, there are a couple of  
19 other things. I have brought these documents in. We have  
20 gone through them.

21 As far as count 33 is concerned, the government  
22 has checked this with Mr. Doyle who is in agreement with  
23 the exhibit as prepared, when we designated the various  
24 documents which we have here pertaining to count 33.

25 MR. DOYLE: It is agreeable, your Honor, yes.

1 jkh4

2                   MR. WALKER: And those are, for the record,  
3 Exhibits 104D, 103A, 101 and 102.

4                   With regard to count 37, the exhibits which  
5 the government has prepared are Government's 104 and  
6 20A, and the government would ask at this time that the  
7 court direct the jury's attention to a particular entry  
8 on Government's 20A to save time. This Government's 20A  
9 reflects a sale from the Parris account at Hornblower  
10 Weeks of 400 shares at 7-3/4 on a settlement date of 11/14/69,  
11 and the confirmation reflects a transaction which occurred  
12 on a trade date as of 11/7/69, and simply to save them  
13 time, I would ask that the court state that it is the  
14 government's contention that you may find --

15                  THE COURT: I don't think I should be doing that,  
16 Mr. Walker. If you wanted that one circled off in big letters  
17 you could have done it and should have done it when you  
18 offered it in evidence.

19                  MR. PAPE: Your Honor, while we are on count 37--

20                  THE COURT: Unless counsel agree that I should  
21 do that to save time, clarify the picture?

22                  MR. PAPE: I do not agree on count 37 but, as  
23 long as we are on count 37, your Honor, if it is the  
24 government's contention that the George Parris account  
25 statement does relate to count 37, then it is my contention

1 jkh5

2 that Scardino Exhibits A and B should also be included  
3 under count 7 because they go as to Mr. Scardino's  
4 knowledge of the scheme.

5 THE COURT: But they only ask for Exhibits 33,  
6 37 and 39. I suppose that is because -- no, I see. I  
7 see.

8 MR. PAPE: The documents which cover those counts.  
9 I contend that if the Parris account statement has to do  
10 with count 37, then Mr. Scardino's knowledge of a scheme  
11 also is required to hold him under count 37 because knowledge  
12 of the scheme is a basis for knowingly using the mails,  
13 etc., so it is my opinion that if you are using the Parris  
14 account sheet, that Scardino's knowledge as to a Parris  
15 sale does become very much relevant as to his knowledge  
16 of a scheme and these documents should go in also.

17 MR. WALKER: We would object to that because  
18 they haven't asked for all the documents relating to the  
19 overall scheme to defraud, which is the main language in  
20 the count. They have asked for the documents specifically  
21 pinpointing those transactions.

22 THE COURT: But under my charge as to the co-  
23 schemers who are responsible and so on, I think they are  
24 entitled to all of them; all of them that bear on them  
25 directly, indirectly or any other way, so we will send them

1 jkh6

2 in. All right?

3 MR. WALKER: Count 39, your Honor, I spoke to  
4 Mr. Doyle and Mr. Doyle had no objection to pinpointing  
5 the jury's attention to the entry on 12/2/69, which was  
6 the 1500 shares that were sold out on that particular day  
7 at 7-1/4.

8 THE COURT: Do you want to mark it, Mr. Doyle,  
9 with a red pencil or something? Just mark the one.

10 MR. WALKER: Can I just put a blue mark next to it?

11 MR. DOYLE: I think if we do that without comment--  
12 why don't we do it that way?

13 THE COURT: I would think the thing to do is to  
14 circle the one there. I don't want to get into comments  
15 on the evidence. I'll wind up there with all kinds of  
16 complications which we don't have. All right.

17 MR. WALKER: Very well.

18 (Marking exhibit.)

19 THE COURT: Would you have any objection to his  
b2 20 circling a similar one on the Parris account?

21 MR. PAFE: No, your Honor, I wouldn't.

22 THE COURT: All right, why don't you circle it  
23 so it draws their attention to what we are talking about.  
24 All right.

25 (Exhibit marked.)

1 jkh7

2 THE COURT: Get the jury.

3 (Open court; jury present at 4 P.M.)

4 THE COURT: It has taken us a little time for  
5 us to gather these exhibits. That is what the problem is  
6 on these notes, and I hope you will forgive us for the delay.  
7 We can't help it.

8 We will send in the exhibits that you asked for.

9 As concerns your question, "Is Mr. Karfunkel  
10 connected with Economic Planning Company on stock he  
11 allegedly purchased Mr. Finkelstein -Bob Howard?" I am  
12 afraid that is a question you will have to answer. It  
13 turns on your recollection of the evidence and if you want  
14 your recollection aided by any testimony or any exhibit,  
15 if you will tell me what you want, I will be happy to  
16 have that testimony read and/or the exhibit sent in to you,  
17 but otherwise, it must be your memory. It is a question  
18 I can't answer. You have to answer it.

19 All right, you may resume your deliberations.

20 (Exhibits handed to the foreman of the jury.)

21 (Jury retired at 4:04 P.M.)

22 (Recess)

23

24

25

2 (Open court; jury present at 4:55 P.M.)

3 (Roll call taken; all present.)

4 THE CLERK: Mr. Foreman, has the jury agreed  
5 upon a verdict?

6 THE FOREMAN: Yes, we have.

7 THE CLERK: Is this your verdict?

8 THE FOREMAN: That is the verdict.

9 THE CLERK: I will read the verdict.

10 As to count 1, we find the defendant Finkelstein,  
11 also known as Howard, not guilty.

12 Count 1 as to Scardino, guilty.

13 Count 1, Segal, guilty.

14 As to count 1, Zuber, not guilty.

15 As to count 2, Segal guilty.

16 As to count 3, Segal guilty.

17 As to count 4, Scardino guilty.

18 As to count 5, Segal guilty.

19 As to count 6, Segal guilty.

20 As to count 7, Segal guilty.

21 As to count 8, Segal guilty.

22 As to count 9, Segal guilty.

23 As to count 10, Segal guilty.

24 As to count 11, Scardino guilty.

25 As to count 12, Scardino guilty.

1 jkh

1336

2 As to count 13, Scardino guilty.

3 As to count 14, Scardino guilty.

4 As to count 16, Scardino guilty.

5 As to count 17, we find the defendant Finkelstein,  
6 also known as Howard, not guilty.

7 Count 17, Scardino not guilty.

8 Count 17, Segal guilty.

9 Count 17, Zuber not guilty.

10 As to count 18 we find the defendant Finkelstein,  
11 also known as Howard, not guilty.

12 As to count 18, Scardino not guilty.

13 As to count 18, Segal guilty.

14 As to count 18, Zuber not guilty.

15 As to count 19 we find the defendant Finkelstein,  
16 also known as Howard, not guilty.

17 Count 19, Scardino not guilty.

18 Count 19, Segal guilty.

19 Count 19, Zuber not guilty.

20 As to count 21, we find the defendant Finkelstein,  
21 also known as Howard, not guilty.

22 Count 21, Scardino not guilty.

23 Count 21, Segal guilty.

24 Count 21, Zuber not guilty.

25 As to count 22, we find the defendant Finkelstein,

1 jkh

2 also known as Howard, not guilty.

3 Count 22, Scardino not guilty.

4 Count 22, Segal guilty.

5 Count 22, Zuber not guilty.

6 As to count 23, we find the defendant Finkelstein,

7 also known as Howard, not guilty.

8 Count 23, Scardino not guilty.

9 Count 23, Segal guilty.

10 Count 23, Zuber not guilty.

11 As to count 28, we find the defendant Finkelstein,

12 also known as Howard, not guilty.

13 Count 28, Scardino not guilty.

14 Count 28, Segal guilty.

15 Count 28, Zuber not guilty.

16 As to count 39, we find the defendant Finkelstein,

17 also known as Howard, guilty.

18 As to count 29, Scardino, not guilty.

19 Count 29, Segal guilty.

20 Count 29, Zuber guilty.

21 As to count 30, we find the defendant Finkelstein,

22 also known as Howard, not guilty.

23 Count 30, Scardino guilty.

24 Count 30, Segal guilty.

25 Count 30, Zuber not guilty.

2 As to count 32 we find the defendant Finkelstein,  
3 also known as Howard, not guilty.

4 Count 32, Scardino guilty.

5 Count 32, Segal guilty.

6 Count 32, Zuber not guilty.

7 As to count 33, we find the defendant Finkelstein,  
8 also known as Howard, not guilty.

9 Count 33, Scardino not guilty.

10 Count 33, Segal guilty.

11 Count 33, Zuber not guilty.

12 As to count 34, we find the defendant Finkelstein,  
13 also known as Howard, not guilty.

14 Count 34, Scardino not guilty.

15 Count 34, Segal guilty.

16 Count 34, Zuber not guilty.

17 As to count 37, we find the defendant Finkelstein,  
18 also known as Howard, not guilty.

19 Count 37, Scardino guilty.

20 Count 37, Segal guilty.

21 Count 37, Zuber not guilty.

22 As to count 39, we find the defendant Finkelstein,  
23 also known as Howard, not guilty.

24 Count 39, Scardino not guilty.

25 Count 39, Segal guilty.

2 Count 39, Zuber not guilty.

3 As to count 30, we find the defendant, Finkelstein,  
4 also known as Howard, not guilty.

5 Count 40, Scardino not guilty.

6 Count 40, Segal guilty.

7 Count 40, Zuber not guilty.

8 As to count 41, we find the defendant Finkelstein,  
9 also known as Howard, not guilty.

10 Count 41, Scardino not guilty.

11 Count 41, Segal guilty.

12 Count 41, Zuber not guilty.

13 As to count 43, we find the defendant Finkelstein,  
14 also known as Howard, not guilty.

15 Count 43, Scardino not guilty.

16 Count 43, Segal guilty.

17 Count 43, Zuber not guilty.

18 As to count 44, we find the defendant Finkelstein,  
19 also known as Howard, guilty.

20 Count 44, Scardino not guilty.

21 Count 44, Segal guilty.

22 Count 44, Zuber not guilty.

23 As to count 45, we find the defendant Finkelstein,  
24 also known as Howard, not guilty.

25 Count 45, Scardino not guilty.

2 Count 45, Segal guilty.

3 Count 45, Zuber not guilty.

4 Mr. Foreman, Mr. Allen, is that your verdict?

5 THE FOREMAN: That is my verdict.

6 THE CLERK: Mrs. Budick, is that your verdict?

7 JUROR NO. 2: Yes, it is.

8 THE CLERK: Miss Martinez, is that your verdict?

9 JUROR NO. 3: Yes.

10 THE CLERK: Frede, is that your verdict?

11 JUROR NO. 4: It is.

12 THE CLERK: Lloyd, is that your verdict?

13 JUROR NO. 5: It is.

14 THE CLERK: Marsala, is that your verdict?

15 JUROR NO. 6: It is.

16 THE CLERK: Stevens, is that your verdict?

17 JUROR NO. 7: It is.

18 THE CLERK: Lewis, is that your verdict?

19 JUROR NO. 8: Yes.

20 THE CLERK: Brinn, is that your verdict?

21 JUROR NO. 9: Yes.

22 THE CLERK: Meyers, is that your verdict?

23 JUROR NO. 10: Yes.

24 THE CLERK: Brown, is that your verdict?

25 JUROR NO. 11: Yes.

2 THE CLERK: Hospie, is that your verdict?

3 JUROR NO. 12: Yes.

4 THE COURT: I want to commend the jury for the  
5 very conscientious and careful attention which you gave  
6 to this case. I never set what I would have done if I were  
7 on the jury because I don't know, and as I told you,  
8 it is your job to decide the guilt or innocence of these  
9 people.

b2 10 I do want to thank you, though, for deciding  
11 the case. It is the kind of case where there is room,  
12 with so many complications, where there might be disagreements,  
13 in which case we would have to do it all over again, and  
14 I am sure nobody wants that.

15 So I want to thank you for the time and effort  
16 you gave and express the thanks of counsel as well. It  
17 has been a very good trial for one as involved as this. We  
18 had fine lawyers on all sides and a very exceptionally good  
19 jury, and I wish you goodnight now and a merry Christmas.

20 (Jury excused and left the courtroom.)

21 THE COURT: All right.

22 MR. KIRSCHNER: Thank you, your Honor.

23 THE COURT: Your Honor, with respect to motions,  
24 could all defendants have permission to reserve any motions  
25 that may be made until the day of sentence?

1 jkh

1342

2 THE COURT: I prefer not to. I prefer it now,  
3 without prejudice to renewing them then if you want to, but  
4 by the day of sentence this case will be long gone from  
5 my mind. It is fresh in my memory now and I would prefer  
6 you to make them now.

7 MR. DOYLE: Your Honor, on behalf of the defendant  
8 Segal we renew the motions that were made at the close of  
9 the government's case and the close of the evidence at this  
10 time, your Honor.

11 THE COURT: I deny them.

12 MR. KIRSCHNER: On behalf of defendant Zuber,  
13 we renew all of the motions previously made.

14 THE COURT: Denied.

15 MR. NEWMAN: In behalf of the defendant Finkelstein,  
16 I renew all of the motions made previously.

17 THE COURT: Denied.

18 On behalf of the defendant Scardino we renew  
19 all of the motions, especially the motion to sever, your  
20 Honor.

21 THE COURT: Denied.

22 MR. WALKER: Your Honor, the government has an  
23 application.

24 THE COURT: All right.

25 MR. WALKER: Your Honor, with respect to the bail

1 jkh

1343

2 for these defendants, the government would move --

3 MR. GREENBERG: Excuse me, your Honor, could we  
4 get the door closed so we could hear?

5 (Pause.)

6 MR. WALKER: Your Honor, the government would  
7 make the following months with respect to bail, and I will  
8 repeat all of them briefly and then go into each one in  
9 detail.10 Essentially, our motion is for Mr. Finkelstein  
11 and Mr. Zuber to be remanded and for Mr. Scardino to have  
12 a \$25,000 PRB secured by \$2,500 cash and for Mr. Segal to  
13 have a \$50,000 PRB secured by \$2,500 cash, and I can go  
14 into the reasons for the government's application at this  
15 time.

16 THE COURT: All right.

17 MR. WALKER: With respect to Mr. Finkelstein  
18 and Mr. Zuber --19 THE COURT: Let's take them one at a time. I  
20 don't think they are siamese twins.

21 MR. WALKER: Very well, your Honor.

22 With respect to Mr. Finkelstein, Mr. Finkelstein  
23 was found guilty here on two counts, two very serious  
24 offenses, counts 29 and 44, each of which carry a sentence  
25 of five years.

2                   Mr. Finkelstein has an extensive criminal record  
3 which goes back to 1962 for a Mann Act violation at that  
4 time. Since that time he has been convicted of interstate  
5 transportation of stolen property and possession of stolen  
6 mail and I understand that those were securities.

7                   He has served, in 1972, a two-year sentence imposed  
8 in respect of that last conviction.

9                   Mr. Finkelstein showed in this case, your Honor,  
10 a use of strongarm tactics in connection with the conduct  
11 of Mr. Segal's business that I think more than anything  
12 eloquently bespeaks the nature of this man.

13                  THE COURT: I'm sorry, I didn't hear you.

14                  MR. WALKER: I think that more than any words  
15 that I could say indicates to me, indicates to the government  
16 the criminal tendencies of this man.

17                  THE COURT: What facts?

18                  MR. WALKER: The facts that he went out and obtained  
19 Mr. Zuber, who was, in effect, a gunman, to carry out the  
20 wishes of Mr. Segal in this transaction.

21                  In addition, your Honor, I can report that on  
22 December 5th an indictment was filed in Las Vegas, Nevada,  
23 against Mr. Finkelstein and also parenthetically, Mr.  
24 Zuber, charging them with conspiracy and charging them  
25 with interstate transportation of stolen property or property

1 jkh

1345

2 taken by fraud, and that they presently have this indictment  
3 facing them, which has just been handed down which, in  
4 the government's view, adds to their incentive to flee  
5 in the present circumstances.

6 With regard to Mr. Zuber, the government would  
7 move to remand Mr. Zuber who was found guilty on count 29.

8 THE COURT: Wasn't he also guilty on --

9 MR. GREENBERG: No, sir, just one count.

10 THE COURT: That's right.

11 MR. WALKER: Count 29. Your Honor is aware of the  
12 facts of this case, the fact that he sought to carry out  
13 Mr. Segal's business in recovering the money in this case  
14 and carried firearms in the process, and that he used  
15 threats against Clegg and against McKibbon in this trans-  
16 action.

17 It is the government's position that he is  
18 a danger to the community.

19 In addition to that, your Honor, I have reliable  
20 information that has been reported to me, and it is no  
21 secret to Mr. Zuber or to his lawyer, by a Strike Force  
22 attorney, who has been conducting investigations, with which  
23 Mr. Zuber and his attorney are aware, on the west coast,  
24 that Mr. Zuber, in effect, offered money to have a witness  
25 who testified in this particular case killed and, in addition

1 jkh

1346

2 to that, your Honor, it is the government's understanding  
3 that Mr. Zuber has a history of narcotics violations.

4 He was convicted in a narcotics case and that  
5 case was overturned by virtue of a parallel Michigan  
6 Supreme Court case which held a particular law under which  
7 he was convicted unconstitutional, so he does not have  
8 any record per se on the books at the present time, although  
9 I understand he did serve time on that particular narcotics  
10 violation.

11 In addition, your Honor, the defendant Zuber  
12 also faces this very serious indictment which was just  
13 handed down, and it is the government's view that he has  
14 an incentive to flee.

15 Now, with regard to Mr. Scardino, it is the  
16 government's view that this very serious conviction, series  
17 of convictions -- Mr. Scardino now has been convicted on  
18 numerous counts involving conspiracy, involving sale of  
19 unregistered stock and involving fraud -- that Mr. Scardino,  
20 although the government does not feel that he poses as  
21 much of a risk of flight as Mr. Finkelstein or Mr. Zuber,  
22 that his bail should be increased, and the government would  
23 ask that his bail be a \$25,000 personal recognizance bond  
24 secured by \$2,500 cash, and that his bail limits be  
25 severely restricted to the City of Houston and to New York

1 jkh

JA1506

1347

2 city.

3 It is the government's view with respect to Mr.  
4 Segal that Mr. Segal -- and the government has come to this  
5 determination after lengthy discussions with Mr. Segal's  
6 brother who is an attorney, and who, as far as the government  
7 can understand, has an unblemished past, and who is presently  
8 and has been presently living near Mr. Alan Segal and, in  
9 effect, looking after him and is his current employer, that  
10 Mr. Segal should be subjected to a \$50,000 personal  
11 recognizance bond secured by \$2,500 cash, with that personal  
12 recognizance bond to be co-signed by his brother, Daniel  
13 Segal, and that Mr. Segal be restricted to the district of  
14 Miami and to the Southern District of New York with one  
15 exception, and Mr. Doyle has spoken to me about it, that  
16 on business, on the business of his brother, Daniel Segal,  
17 Mr. Segal be permitted to take one trip to take care of his  
18 brother's business, a certain task for his brother in Los  
19 Angeles, with the dates of that trip to Los Angeles to be  
20 reported to the U.S. Attorney's office both before Mr. Segal  
21 goes and after he returns.

22 MR. NEWMAN: May I be heard, your Honor?

23 THE COURT: Well, let me see here. Let's hear  
24 Mr. Pape first.

25 Do you agree to the terms that he suggests for

1 jkh

JA1507

1348

2 bail?

3 MR. PAPE: No, sir, I do not. The reasons are as  
4 follows: First, Mr. Scardino is 49 years old. He has  
5 lived in Houston, Texas, all of his life. His entire  
6 family lives in Houston, Texas, and has all their lives.

7 THE COURT: What is his entire family?

8 MR. PAPE: He has brothers, a mother, an elderly  
9 mother, an ex-wife. He does have a son who does not live  
10 in Houston now. But the entire Scardino family lives in  
11 Houston, Texas.

12 He has never been arrested prior to this incident,  
13 has no arrest record, not even a misdemeanor arrest record.

14 He has always been employed. He has always  
15 made whatever appearances here have been required, and he  
16 has been financially ruined by having to defend in this  
17 case, and it would be a tremendous burden to require him  
18 to post a \$2,500 deposit.

19 I have no objection to raising the amount of  
20 the personal recognizance bond, but he does not presently  
21 have \$2,500, and he poses no threat or flight, in my  
22 opinion, your Honor.

23 THE COURT: Do you wish to respond?

24 MR. WALTER: Your Honor, it is the government's  
25 view that the increase in bail is appropriate in view of

1 jkh

JA1508

1349

2 the numerous counts with which this defendant has been  
3 convicted at this time.

4 THE COURT: I understood that. I wanted you to  
5 respond to what he said about his family. Do you know  
6 anything about that?

7 MR. WALKER: Your Honor, I have no additional  
8 information?

9 THE COURT: Do you know anything about his financial  
10 situation?

11 MR. WALKER: Your Honor, it is my understanding  
12 that the man does have and is able to make the \$2,500 cash  
13 and that should pose no problem. It is the additional security  
14 that the government would like to have --

15 MR. PAPE: I would like to know upon what Mr.  
16 Walker bases that opinion, your Honor.

17 MR. WALKER: My understanding is that the man has  
18 been employed.

19 MR. PAPE: I have been employed, your Honor, but  
20 as I said, the defense of this case has ruined him  
21 financially.

22 THE COURT: It doesn't strike me as any astronomical  
23 sum of money, most of it being personal recognizance.  
24 I think in view of the gravity of the offense, his role  
25 in the case, the proximity of Houston to the border, the

1 jkh

JA1509

1350

2 fact that he apparently is not living with his wife or  
3 his child -- his child is a grown man, I take it--

4 MR. PAPE: He is divorced.

5 THE COURT: I think his roots are so firmly fixed  
6 that he might not be tempted to flee, and he stands on  
7 a somewhat different footing than he did before trial.

8 SO I will grant the motion to raise the-- what  
9 is the present recognizance bond?

10 MR. WALKER: \$10,000.

11 THE COURT: 10,000. How much cash?

12 MR. WALKER: No cash. I would ask that it be  
13 25,000 and 2,500 cash.

14 THE COURT: I think 20,000 and 2,000 cash. 

15 MR. PAPE: Your Honor, may we have a period of  
16 time in which to make a cash deposit without having Mr.  
17 Scardino remanded?

18 THE COURT: Yes. I will give you until 4 o'clock  
19 tomorrow afternoon.

20 MR. PAPE: Thank you, your Honor.

21 MR. DOYLE: Your Honor, the conditions proposed  
22 by Mr. Walker are agreeable, and I did discuss them in some  
23 detail with him beforehand. There was one item that we  
24 also did discuss and agree upon which was that Mr. Segal  
25 is now employed by his brother, Daniel Segal, who is an

1 jkh

JA1510

1351

2 attorney, and who is primarily in the real estate business  
3 in Florida, and they do have properties in Orlando and  
4 Tampa that Mr. Segal has been visiting regularly, and I  
5 understand that it is agreeable with Mr. Walker for his  
6 bail limits to be extended to those cities.

7 THE COURT: I don't exactly like -- I have no  
8 objection to that. It is the procedures i don't like,  
9 because they are so vague and indefinite.

10 I think what you had better do is set the bail  
11 and then make application in the usual way when he chooses  
12 to go out of town, stating where he is going and how long  
13 he is going to be there, where he can be reached and so on,  
14 because should he take it in his mind not to come back  
15 with these arrangements, I think it would be a little  
16 vague exactly what the conditions were.

17 So that I will grant the government's application  
18 on your consent, on the terms of the bail. What is that now?

19 MR. WALKER: Yes, your Honor, it would be the  
20 \$50,000 personal recognizance bond co-signed by the brother,  
21 Daniel Segal, plus \$2,500 cash or surety deposit, plus  
22 restricted to the District of Miami and the Southern  
23 District of New York.

24 THE COURT: Good. I will grant bail on those  
25 conditions and with leave for you to apply for any time

1 jkh

1352

2 he wishes to leave either the district of Miami or the  
3 district of New York. All right?

4 MR. DOYLE: Yes, your Honor.

5 Your Honor, we do have the funds available to  
6 submit the deposit but it is too late to get to the clerk's  
7 office, so if we could have your Honor's permission to do  
8 it by noon tomorrow, that would be--

9 THE COURT: You have it.

10 MR. DOYLE: Thank you, your Honor.

11 THE COURT: All right.

12 MR. GREENBERG: Your Honor, first, I don't agree  
13 with anything Mr. Walker said with the exception of the  
14 fact that an indictment has been returned in Las Vegas.

15 The first matter I would like to bring to the  
16 court's attention --

17 MR. WALKER: Here it is.

18 MR. GREENBERG: With the exception of that--  
19 is a sad one. We found out early this morning that Mr.  
20 Zuber's mother suffered a stroke late last night. She  
21 is probably just coming off an operating table now. She  
22 is in the Bodsford Hospital in Detroit. She is not expected  
23 to live, and we were hoping that Mr. Zuber could get there  
24 some time today to see her.

25 Now, with reference to the other cases, let me

2 address, first of all, Mr. Walker's allegation that Mr.  
3 Zuber was supposed to have a witness killed.

4 THE COURT: I am having trouble hearing you.

5 MR. GREENBERG: I want to address, first of all,  
6 Mr. Walker's allegation that Mr. Zuber attempted to have  
7 a witness killed. Mr. Kirschner and I were both Assistant  
8 United States Attorneys in Los Angeles until about eight  
9 months ago, your Honor. We heard that rumor and nothing  
10 could have been more abhorrent to us.

11 We determined that we would not represent Mr.  
12 Zuber until we had satisfied our own minds whether or not  
13 there were any facts to support that allegation.

14 We discussed it at length with Mr. Zuber. We  
15 investigated it. We had him take a polygraph examination  
16 which he passed, and I believe that allegation to be com-  
17 pletely groundless.

18 If in fact it were true, if Mr. Zuber was in fact  
19 a threat to the community or danger to flee, I find it  
20 difficult to understand why the indictment that was just  
21 returned in the district in Las Vegas, which was returned  
22 required nothing more than a PR bond and asking for nothing  
23 more than a summons.

24 We are supposed to appear there next Friday,  
25 and with the good grace of this court, we will be there on

1 jkh

2 our own to answer those questions.

3 THE COURT: Did the task force get that indictment?

4 MR. GREENBERG: Yes, sir, it did.

5 Now, additionally, Mr. Zuber has lived in one  
6 place for seven years. He lives with his wife, five children.  
7 This case has had a tremendous financial impact on him as  
8 well. He is trying very hard to get on his own feet through  
9 employment. He has been employed with a company called  
10 International Music Company, which makes speakers, which  
11 is in the process of going out of business, and Mr. Zuber  
12 is about to and has been employed by a store called the  
13 Wood People.

14 He has roots in Los Angeles, is working with us;  
15 we are already preparing a defense in the next case.

16 I represent that he presents no threat whatsoever  
17 to flee. He has no plans to do so.

b4 18 Insofar as his threat to the community is concerned,  
19 this is a case that happened five years ago and the Las  
20 Vegas case, incidentally, also involves facts that took  
21 place in 1960.

22 The statute of limitations would have run in  
23 another two weeks or so. It ends on December, 1969, so  
24 we are talking about facts, again, that were five years  
25 ago, and Mr. Walker speaks of an understanding of the

2 narcotics history -- I was very anxious to hear what facts  
3 he had to support that understanding, but I heard nothing  
4 except one conviction. Again, it was in 1970, which was  
5 ultimately reversed.

6 He has the roots, he is involved with us, we  
7 are preparing for this other case, he has every intention  
8 of making it.

9 I suggested that the allegation that he is about  
10 to flee is groundless, as is the allegation that he presents  
11 any threat to the community. *ONLY COPY AVAILABLE*

12 THE COURT: Where does he live?

13 MR. GREENBERG: He lives in Costa Mesa, California,  
14 your Honor, where he has resided for seven years with his  
15 wife and five children.

16 THE COURT: How old are his children?

17 MR. GREENBERG: The children range in age from  
18 around -- one moment.

19 MR. KIRSCHNER: 7 to 19, your Honor.

20 THE COURT: Do you wish to respond, Mr. Walker?

21 MR. WALKER: No, your Honor. I have stated my  
22 position.

23 MR. GREENBERG: One other point I overlooked in  
24 my notes. Mr. Zuber also has a diabetic condition which  
25 requires some regular treatment.

1 jkh

2 THE COURT: What is the present bail?

3 MR. WALKER: \$15,000 personal recognizance bond.

4 MR. GREENBERG: He has made every appearance ever,  
5 anywhere, by the way. There is no history of his failure,  
6 to appear.7 THE COURT: I can't on these facts find any strong  
8 likelihood of flight. I don't think anything in the way  
9 of increasing the bail would do any more to deter flight  
10 than the present personal recognizance bond. It probably  
11 would only serve to impose an added hardship on the defendant.  
12 So I am going to deny the government's motion to remand  
13 and continue Mr. Zuber on bail under the present bond which  
14 will have to be rewritten, though, I believe, won't it?

15 MR. WALKER: Yes, your Honor.

16 DEFENDANT ZUBER: Thank you, your Honor.

17 MR. GREENBERG: Thank you, your Honor.

18 THE COURT: And I will give you until 4 o'clock  
19 to rewrite the present bond, 4 o'clock tomorrow.

20 MR. GREENBERG: Thank you, your Honor.

21 MR. WALKER: Your Honor, I would ask that the  
22 bond be rewritten in such a way that Mr. Zuber is restricted  
23 to Costa Mesa and to Los Angeles and to the Southern District  
24 of New York.

25 MR. KIRSCHNER: Los Angeles County, your Honor.

2 THE COURT: Los Angeles County?

3 MR. KIRSCHNER: And his mother is in Detroit.

4 THE COURT: I am sure the same conditions that  
5 I said as to Mr. Segal apply, if you want to take a special  
6 trip like that, make an application to the United States  
7 Attorney.

8 MR. KIRSCHNER: We will, your Honor.

9 THE COURT: I understand the urgency.

10 Do you have any objection to his going to Detroit?

11 MR. WALKER: No, your Honor.

12 THE COURT: To visit his mother?

13 MR. WALKER: Yes.

14 MR. KIRSCHNER: He would like to leave tonight  
15 if that is okay?

16 MR. WALKER: No objection.

17 THE COURT: All right.

18 DEFENDANT ZUDER: Thank you, your Honor.

19 MR. WALKER: In view of your Honor's disposition  
20 with regard to Mr. Zuber, the government would make a dif-  
21 ferent application with regard to Mr. Finkelstein.

22 THE COURT: All right.

23 MR. WALKER: And that is that we would ask that  
24 Mr. Finkelstein's personal recognizance bond be secured  
25 by \$1,500 cash, be a \$15,000 personal recognizance bond and

1 jkh

2 be secured by \$1,500 cash, in view of the man's prior  
3 record.

4 MR. NEWMAN: May I be heard, your Honor?

5 THE COURT: Surely.

6 MR. NEWMAN: If your Honor please, Mr. Finkelstein,  
7 as Mr. Walker well knows, is presently on probation. He  
8 was released from prison in February, 1973, after serving  
9 18 months, and was given a 34-month probation period.

10 He served 22 months of that probation and he has  
11 been reporting regularly. There has been absolutely no  
12 problem about his probationary report.

13 He is married. His wife is in the courtroom here  
14 and has been so throughout the entire trial.

15 He has got two children of his own that are in  
16 college here in New York City and for the last ten years  
17 he has been living with his present wife and supporting  
18 her twin sons of 14 and her daughter of 17, your Honor.

19 He obtained employment as soon as he was released  
20 in February of 1973. He started off as an operations man  
21 at a corporation, American Motel Operators Corporation,  
22 which runs a motel in Orlando, Florida.

23 After about a year he was promoted and is now  
24 a sales director at another company, Sunshine Resorts, which  
25 runs three motels in Orlando, Florida.

mmh

As a result of this trial and coming back and forth, he tells me he has absolutely no funds other than what he earns from his salary.

He makes \$1,800 a month as the sales director for this corporation, your Honor, and with his wife and these children to support, he also has an ex-wife that he has been paying alimony regularly to.

I spoke to her myself about six weeks ago and she confirmed to me that he has been paying this alimony to her and for child support, one child still under 21. As far as his income tax reports, they have been studied by the Probation officer, and, as I said, your Honor, he has done 22 months of this. I put it to your Honor as deeply as I can, I have known him a long time, 23 years, I know what he has done good and I know what he has done bad. This all happened five years ago, both cases, this case and the one in which he has just been indicted in Los Angeles, and regarding that I have received a letter dated December 5th from Mr. John M. Dow to my office. It says:

"Dear Mr. Newman:

Pursuant to your request please find enclosed a summons and a copy of the indictment returned in the above entitled case."

I have that letter here, your Honor, and the response, and I had lots of discussions with Mr. Dow in this case. He has been in my office; we discussed the entire case. I never heard one word from Mr. Dow or from Mr. Finkelstein, the FBI agent, who was also in my office, that they thought for a minute that Mr. Finkelstein would not be in Las Vegas where he has to be back on the 20th. He has been in court here every time, flying up sometimes at his own expense, and he has testified in this case before the grand jury, and the Las Vegas case.

JUDGE COURT: Where does he live now?

MR. NEWMAN: In Bayridge, Queens, and commutes every two weeks from his job in Florida. He is really employed and subject to the Probation Department, and as far as the likelihood of his fleeing, your Honor, I do not stick my neck out for clients as I do for him -- he will be here when he has to be sentenced.

Now, he just doesn't have the cash that Mr. Walker has requested. It is not very much money. And if he had it, I would tell him you can't get away -- he wouldn't have that cash. He has no stocks, no bonds, no real estate, anything like that, your Honor. I think present bail conditions should continue and he will be here.

JUDGE COURT: Do you wish to respond?

1 mmh

1361

2 MR. WALKER: No, your Honor, we just repeat the  
3 earlier position.

4 THE COURT: I will deny the application. I  
5 think it would serve no useful purpose; it would impose  
6 a hardship on the defendant.

7 MR. WALKER: I would ask that his bail then be  
8 restricted to, I guess it is, the Eastern District of New  
9 York, Southern District, and whatever district Orlando,  
10 Florida, is in, and the Las Vegas district.

11 MR. NEWMAN: Mr. Finkelstein just tells me  
12 pursuant to his probation he is limited to where he is  
13 living, but the Probation Department has allowed him to  
14 make different trips throughout the United States as part  
15 of his job.

16 THE COURT: I would put the same restriction on  
17 that that I have on the others. If he wants to go, then  
18 he will have to apply. I know that is something of a nuisance,  
19 but otherwise we have no control over the defendants. Let  
20 him apply, state the facts, where he is going to be, how  
21 long he is going to be there and all that. He will be  
22 restricted to Bayside, Queens, Manhattan, and if he wants  
23 to go any place else he will have to apply.

24 MR. NEWMAN: In addition to his job, Orlando  
25 and Las Vegas.

1 mmh

1362

2 THE COURT: Yes, Orlando and Las Vegas.

3 Sentencing January 28th at 10 A.M., and it  
4 will be in courtroom 1305.5 MR. PAPE: Your Honor, may I be heard concerning  
6 travel restrictions. In addition to an office in  
7 Houston, Mr. Scardino's firm, decorating firm, now has an  
8 office in Dallas, and he spends his time equally between  
9 Dallas and Houston. He is still in the business of furnishing  
10 carpeting and decorating to hotels, and I would request  
11 that his travel restrictions be limited not only to Houston,  
12 but to the Southern District of Texas and the Northern  
13 District of Texas because of his work.

14 MR. WALKER: Does he work on a regular basis?

15 MR. PAPE: Yes.

16 MR. WALKER: I have no objection.

17 THE COURT: All right.

18 MR. DOYLE: With respect to Mr. Segal, could we  
19 have until 4 P.M. tomorrow to get our bond written?

20 THE COURT: Surely.

21 MR. DOYLE: Your Honor, on behalf of all defense  
22 counsel we would like to express our appreciation for  
23 your having afforded defendants a prompt trial and for your  
24 handling of the case. It has been a thoroughly professional  
25 atmosphere for all of us.

2 THE COURT: It is mutual.

3 MR. WALKER: We concur.

4 MR. PAPE: Your Honor, I have one further request.

5 I learned only this afternoon that the defendant Richard  
6 McKibbin had testified before the SEC. We have not seen  
7 a copy of that transcript. I would like for the government  
8 to make available to me a copy of Richard McKibbin's  
9 testimony before the SEC.

10 THE COURT: Did you seek it before the trial?

11 MR. PAPE: I didn't know he had testified until  
12 today, your Honor.

13 MR. WALKER: The government would oppose that  
14 application. First of all, SEC testimony is done in private  
15 and there is no showing of a need in the government's view  
16 for this testimony. And if the court were to rule in Mr.  
17 Pape's favor, there would be no end to post-trial discovery  
18 investigations with regard to witnesses who did not appear  
19 and whose testimony is immaterial.

20 THE COURT: I think you will have to move on  
21 papers for that.

22 MR. PAPE: Thank you, your Honor.

23 MR. WALKER: Your Honor, we would like to prepare  
24 a list of the 3500 material that we furnished the defendants  
25 at the trial and make it a part of the court's record, and

1 mmh

1364

2 Mr. Siffert will do that within the next day or two.

3 THE COURT: Who will check it out of defense  
4 counsel?

5 MR. WALKER: Perhaps Mr. Doyle could check it out.

6 THE COURT: Would the rest of you be gracious  
7 enough to assign Mr. Doyle to just go over that and check  
8 it out, otherwise I am afraid I will have to bring you  
9 all back from your other chores.10 MR. GREENBERG: We would feel more comfortable  
11 if we all saw it.

12 THE COURT: You want to fly back?

13 MR. GREENBERG: We have to come back for the  
b2 14 sentencing. We can do it at that time.15 THE COURT: I suggest that you make copies of it  
16 and send it to counsel at least two weeks before sentencing  
17 so that they have an opportunity to go over it.

18 MR. WALKER: Very well.

19  
20 (Whereupon, sentencing was adjourned to January 28,  
21 1975, at 10 a.m., in room 1305.)  
22  
23  
24  
25

1 TRANSCRIPT OF PROCEEDINGS BEFORE MacMAHON, D.J., ON  
ms DECEMBER 13, 1974

1365

2 UNITED STATES OF AMERICA

3 vs.

74 cr. 908

4 HOWARD FINKELSTEIN, et al.

5 -----

6

7 New York, December 13, 1974;  
2.00 o'clock p.m.

8

9 -----

10 Present:

11 Mr. Siffert.

12 Mr. Pape.

13 Defendant Scardino.

14 -----

15

16 MR. PAPE: Your Honor, at the close of yesterday's  
17 court proceedings your Honor set Mr. Scardino's bail pend-  
18 ing sentencing at \$20,000 personal recognizance bond and  
19 \$2000 cash, giving Mr. Scardino until 4 p.m. today to make  
20 that deposit.21 At the end of yesterday's session I discussed  
22 very briefly with Mr. Walker Mr. Scardino's financial  
23 situation. I told him that we thought we could make a  
24 loan request, but if it were impossible, I asked Mr. Walker  
25 whether I could speak with him about it today, and he

1 ms

2 indicated that he was flexible and would listen to me.  
3 I have not been able to locate him. I have discussed  
4 with Mr. Siffert Mr. Scardino's brother Philip, an employee  
5 at NASA, who is the only person with liquid capital from  
6 whom Mr. Scardino thought he could get the loan today.

7 Mr. Scardino called his brother last night and  
8 learned that his brother is in the Virgin Islands on NASA  
9 business and could not be reached today. For that reason  
10 it has been impossible for Mr. Scardino to obtain the  
11 \$2000, and for that reason I would like to make an  
12 application to the Court to either leave Mr. Scardino on  
13 a pure personal recognizance bond or extend the time on  
14 which he can make a deposit to 4 p.m. on Monday.

15 In support of my application I would again point  
16 out to the Court that Mr. Scardino has never been arrested  
17 prior to this, has always lived his entire life in Houston,  
18 and I would also point out that after you had made the  
19 bail decision on Mr. Scardino late yesterday afternoon,  
20 two co-defendants, Messrs. Zuber and Howard, who Mr. Walker  
21 wished to have remanded, and both of whom have prior  
22 criminal records and other criminal cases pending, were  
23 released on pure personal recognizance bonds.

24 My client cannot get the cash today and I would  
25 ask the Judge to consider his financial condition, his

1 financial inability, his clean prior record. I am repre-  
2 senting to the Judge that I have known this man for  
3 approximately five years, I have known the firm, have done  
4 his civil business, and his reputation as a stable citizen  
5 in the Houston community is very good. I can represent  
6 that I think he poses no great threat.

7

8 THE COURT: Mr. Siffert?

9 MR. SIFFERT: We have nothing further to add  
10 than was set forth last night, except to say that I do  
11 understand from Mr. Pape that should money be available it  
12 would be limited to \$1000, regardless of when it would be  
13 due, and the Government would ask that \$1000 be posted.  
14 In other words, we would consent to the reduction from  
15 \$2000 to \$1000.

16 THE COURT: I think that is perfectly reason-  
17 able, and I will extend the time to raise that until Monday  
18 at 4 o'clock. So there will be a \$20,000 personal recog-  
19 nizance bond secured by \$1000 cash deposit.

20 MR. PAPE: Your Honor, may I make one further  
21 request.

22 I appreciate your Honor's consideration. Is it  
23 possible to enable me to return to Houston, to have Mr.  
24 Scardino execute the papers today, and have the deposit  
25 made either by a member of my former New York law firm

1 ms

2 here or in some other way, rather than by me and Mr.  
3 Scardino on Monday?

4 THE COURT: Yes.

5 MR. BAPE: Thank you.

6 ----

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Incorporated Under the Laws of the State of Nevada

NUMBER

1596

SHARE

5000X

**Pioneer Development Corp.**

CAPITAL STOCK \$5,000,000

5,000,000

COMMON STOCK 7,500,000 SHARES  
PAR VALUE \$1.00 EACH

CAPITAL STOCK \$5,000,000.00

**This Certifies that**

\*TONY SCARDINO\*

*is the record holder*

\*FIVE THOUSAND\*

*shares of the Common Stock of***Pioneer Development Corp.**

transferable only on the share register of said Corporation, in person or by duly authorized Attorney, upon surrender of this Certificate properly endorsed or assigned.

This Certificate and the shares represented hereby are issued and shall be held subject to all the provisions of the Articles of Incorporation and the By-Laws of said Corporation and any amendments thereto, to all of which the holder of this Certificate, by acceptance hereof, assents.

A statement of the preferences, privileges and restrictions granted to or imposed upon the respective classes of shares and/or upon the holders thereof, is set forth in full on the back hereof. This Certificate is not valid unless countersigned by the transfer agent.

WITNESS the Seal of the Corporation and the signatures of its duly authorized officers.

Dated NOV 6 1969

SECRETARY

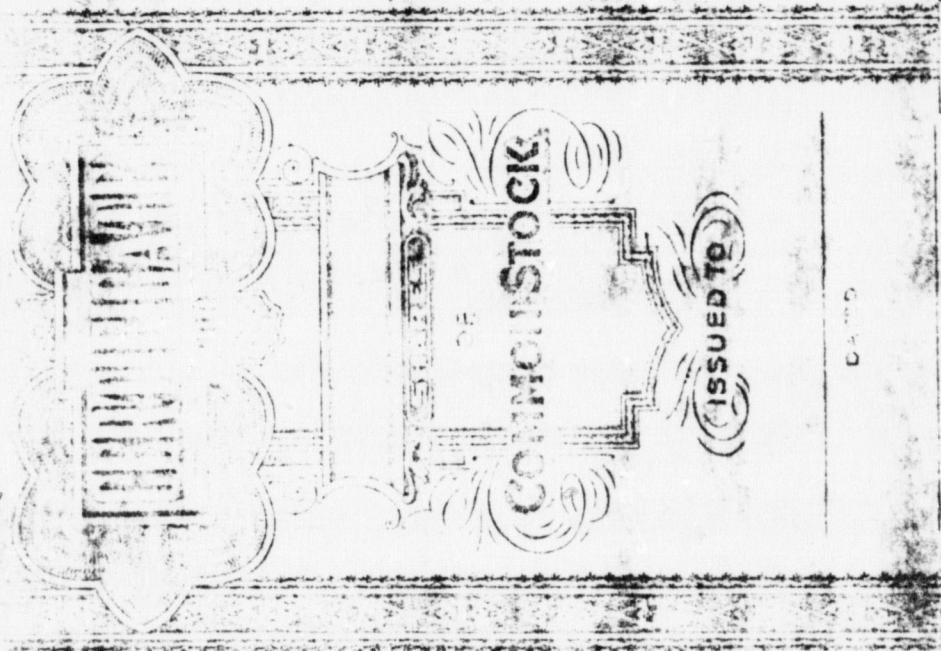
PRESIDENT



COUNTERSIGNED:  
NEVADA CORPORATIONS, INC.  
TWO PYLOND STREET  
RENO, NEVADA  
TRANSFER AGENT.

# Pioneer Development Corp.

The corporation requests the designation of special rights of stockholders, qualifications, limitations or restrictions which may be necessary to the corporation or the transfer agent.



Recd. Recd. Received. I hereby sell, assign and transfer unto John C. Langdon shares

of the Common Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint Nevelyn L. Tracy, Esq., New York, Attorney to transfer the said Stock on the books of the within named Corporation, with full power of substitution in the premises.

Dated 12/18/57

John C. Langdon Tony Sestini

NOTICE THE SIGNATURE OF THIS ATTORNEY  
MUST CORRESPOND WITH THE NAME AS IT APPEARS ON THE  
FACE OF THE CERTIFICATE IN EVERY INSTANCE.  
ALTERATION OR ERASURE FOR ANY REASON PROHIBITED.

3

GOVERNMENT'S EXHIBIT 1-P - STOCK  
CERTIFICATE

GOVT EXHIBIT 1P  
ATTACHED TO  
JA1530

INCORPORATED UNDER THE LAWS OF THE  
STATE OF NEVADA, MAY, 1918

NUMBER

2681

SHARES

\*6000\*

# Pioneer Development Corp.

CAPITAL STOCK \$6,000,000.00  
COMMON STOCK 6,000,000 SHARES  
PAR VALUE \$1.00 EACH

This Certifies that

\*TONY SCARDINO\*

registered holder of

\*SIX THOUSAND\*

PIONEER DEVELOPMENT CORP.

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender  
of this Certificate properly endorsed.

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly  
authorized officers and its Corporate Seal to be hereunto affixed

this NOV 14 1969 A. D. 19

COUPLED, SIGNED AND REGISTERED  
NEVADA AGENCY AND TRUST COMPANY  
111 RAILROAD STREET, RENO, NEVADA  
TRANSFERRED BY  
REGISTRAR

AUTHORIZED OFFICER

NOT VALID UNTIL COUNTERSIGNED BY  
THE TRANSFER AGENT ONLY  
BY THE REGISTRAR



DEC 15 1965

NOV 20 1965

submits to transfer the stock in record  
with full the foregoing Power of Attorney,  
with his Powers of Substitution.

Date: NOV 20 1965

COMMON STOCK

OF

SHARES

CERTIFICATE

ISSUED TO

DATED

No.

For Value Received, hereby sell, assign, and transfer  
unto 6 x 1000

Shares  
of the Common Stock represented by the within  
Certificate, and do, hereby, irrevocably, constitute and appoint  
Attorney  
to transfer the said Stock, on the books of the within named  
Corporation, with full power of substitution, in the premises.

Dated 19

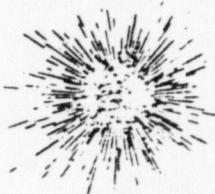
In presence of

Terry Searle

NOTICE THE SIGNATURE OR THIS ASSIGNMENT  
MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE  
FACE OF THE CERTIFICATE IN EVERY PARTICULAR WITHOUT  
ALTERATION OR ENGRAVING OR ANY CHANGE WHATEVER

John D. Edwards

2/25/70



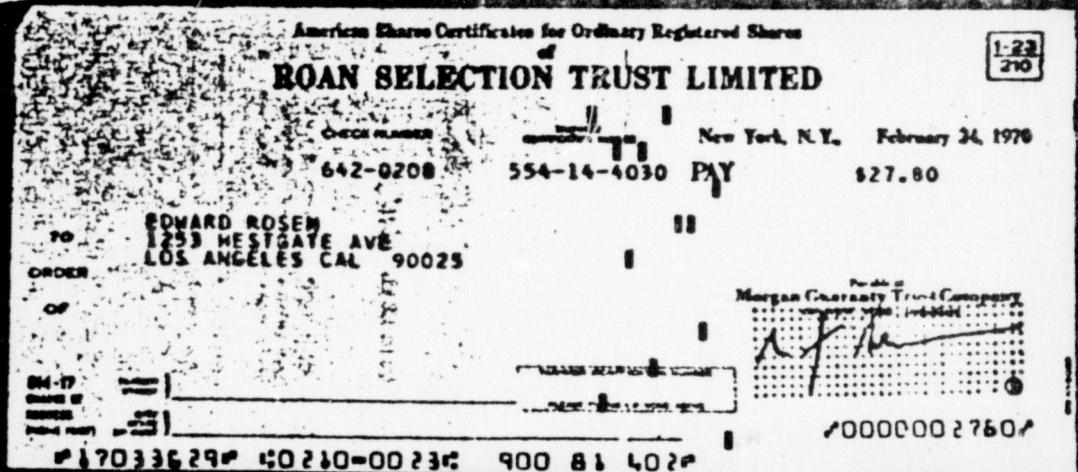
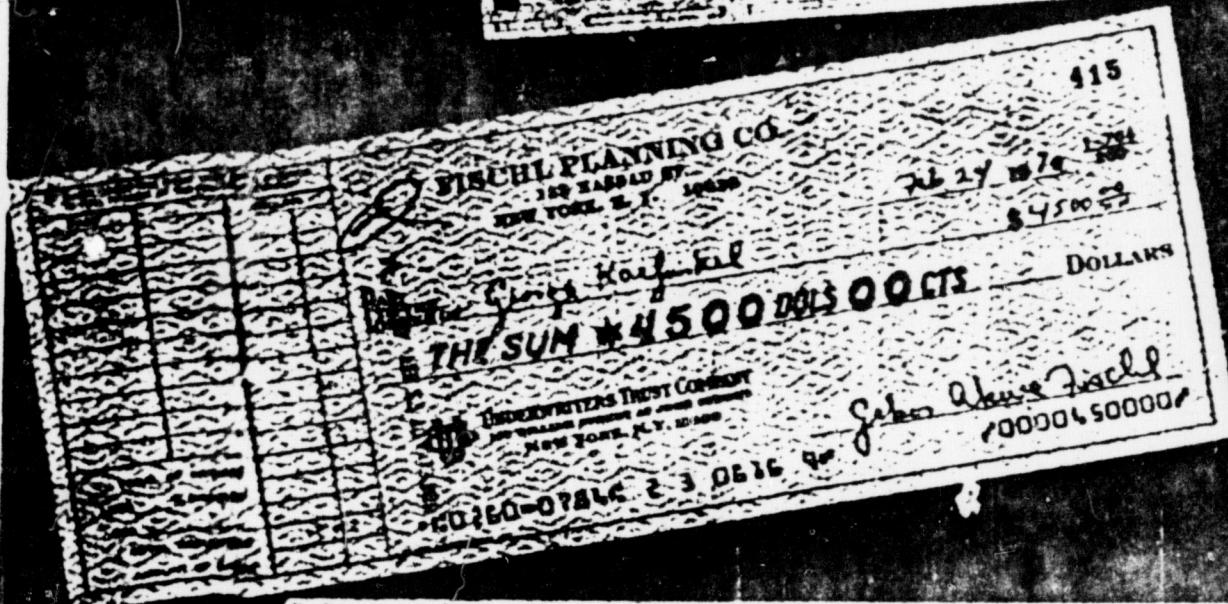
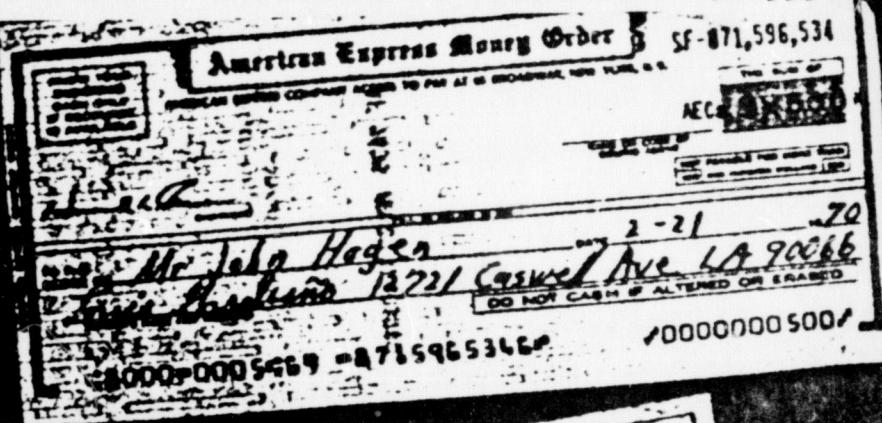
Received from MICHAEL  
KARFUNKEL check  
for the sum of \$4500  
partial payment on sale  
of 10,000 slices of  
stock. The balance ~~due~~  
is to be paid on follow  
\$5500 on MARCH 12 at  
5pm on FRIDAY MARCH 6.  
Cost of 1.50 per slice  
Americana Bob Hart

GOVERNMENT'S  
EXHIBIT  
U. S. Dist. Court  
S. D. of N. Y.

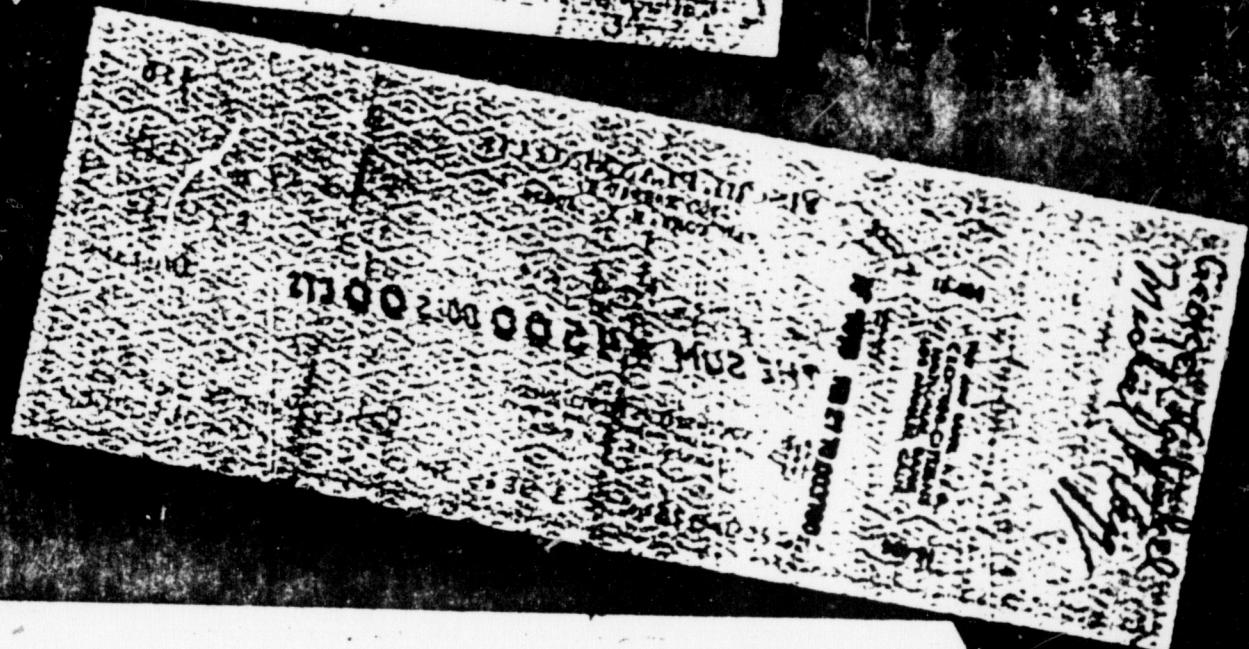
61A *[Handwritten mark]*

U. S. Dist. GOVERNMENT'S EXHIBIT 61B - MISCELLANEOUS DOCUMENTS JA1533  
 S. D. of [redacted]

61 B



AF 1000 PER 27 TO OCT 1960

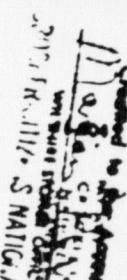


For signature

Richard P. Nixon

RECORDED DOCUMENT

AF 1000 PER 27 TO OCT 1960



AF 1000 PER 27 TO OCT 1960



GOVERNMENT'S EXHIBIT 61D - MISCELLANEOUS DOCUMENTS

Credit Received	
TOTAL OF INVOICES	
LESS % DISCOUNT	
LESS	
TOTAL DEDUCTIONS	
AMOUNT OF CHECK	

132 NASSAU ST.  
NEW-YORK, N. Y. 10038

PAY  
TO THE  
ORDER OF

George Hirschfeld

THE SUM OF 3931 DOLS 25 CTS

1-784  
UNDERWRITERS TRUST COMPANY  
100 WILLIAM STREET AT JOHN STREET  
NEW-YORK, N. Y. 10038  
NEW YORK, N. Y.

00260 07841 230616 90

JA1536

440

March 6 1970  
1-784  
260  
\$ 3,931.25

DOLLARS

George Hirschfeld

000003931251

George - Gifford  
Robert Howard  
Gifford

132 N.Y., U.S. REG.  
UNDERWRITERS  
TRUST CO.  
NEW YORK, N.Y.

1-784

10701543831

GOVERNMENT

EXHIBIT  
U. S. Dist. Court  
S. D. of N. Y.

Gx61D

SPECIFIED PIONEER SALES PROCEEDS

JA1537

G. H. G.

ORVIS BROS. % ALAN SEGAL	ORVIS BROS. % FRANCINE ZAHL	KAREN CO % FRANCINE ZAHL
11/12/69 * \$ 7,000.00	11/10/69 *** \$ 10,837.75	11/7/69 *** \$ 19,032.50
11/17/69 * 15,000.00		11/12/69 * 19,992.50
11/18/69 * 32,000.00		11/17/69 * 22,320.00
11/26/69 ** 11,500.00		12/15/69 *** 6,225.00
11/28/69 ** 15,500.00		12/31/69 * 29,965.00
11/28/69 * 15,000.00		1/3/70 *** 14,724.00
12/2/69 * 10,000.00		
12/8/69 * 4,000.00		
12/10/69 * 15,000.00		
12/11/69 * 4,000.00		
12/15/69 * 5,000.00		
12/19/69 * 15,500.00		
12/24/69 * 13,000.00		
12/29/69 * 22,000.00		
12/30/69 * 27,828.99		
\$ 212,328.99	\$ 10,837.75	\$ 112,259.85

\$ 335,426.59

REPUBLIC NATIONAL BANK % BONIFIDE PRODUCTION \$ 270,331.34	REPUBLIC NATIONAL BANK % ALAN SEGAL \$ 27,000.00	OTHER DISPOSITION FRANCINE ZAHL \$ 38,095.25
---	---	---

\* REPUBLIC NATIONAL BANK % BONIFIDE PRODUCTIONS.

\*\* REPUBLIC NATIONAL BANK % ALAN SEGAL.

\*\*\* CHECKS NOT DEPOSITED AT REPUBLIC ACCOUNTS.

\*\*\*\* \$ 12,724.00 DEPOSITED REPUBLIC NATIONAL BANK % BONIFIDE PRODUCTIONS AND \$ 2,000.00 IN CASH.

G-1475

**SPECIFIED TRANSFERS OF PIONEER STOCK  
NEVADA AGENCY AND TRUST  
OCT. AND NOV. 1969**

**OLD SHAREHOLDERS  
STOCK SURRENDERED**

CORPORATION SERVICES INC.	2,000
D. DEVERICH	3,000
E. V. AND E. DOUMANI	15,200
B. AND V. ERSKINE	2,500
L. FRIEDMAN	4,000
M. GILBERT	3,000
JAN R. GIRVIN	4,400
J. R. GIRVIN	4,750
G.A. GOLITZIN	500
K. AND G. KASTNER	10,000
KENT ORGINAZATIONS INC.	100
F.R. AND L.E. LESTER	3,500
C. MAYNARD	6,200
J.P. MILLS	5,000
POSTAGE VENDORS INC.	15,000
B.H. VANDERSTEEN	100,000
B. WEIBART	25,800
G. WILDER	4,000

208,950

**NEW SHAREHOLDERS  
STOCK ISSUED**

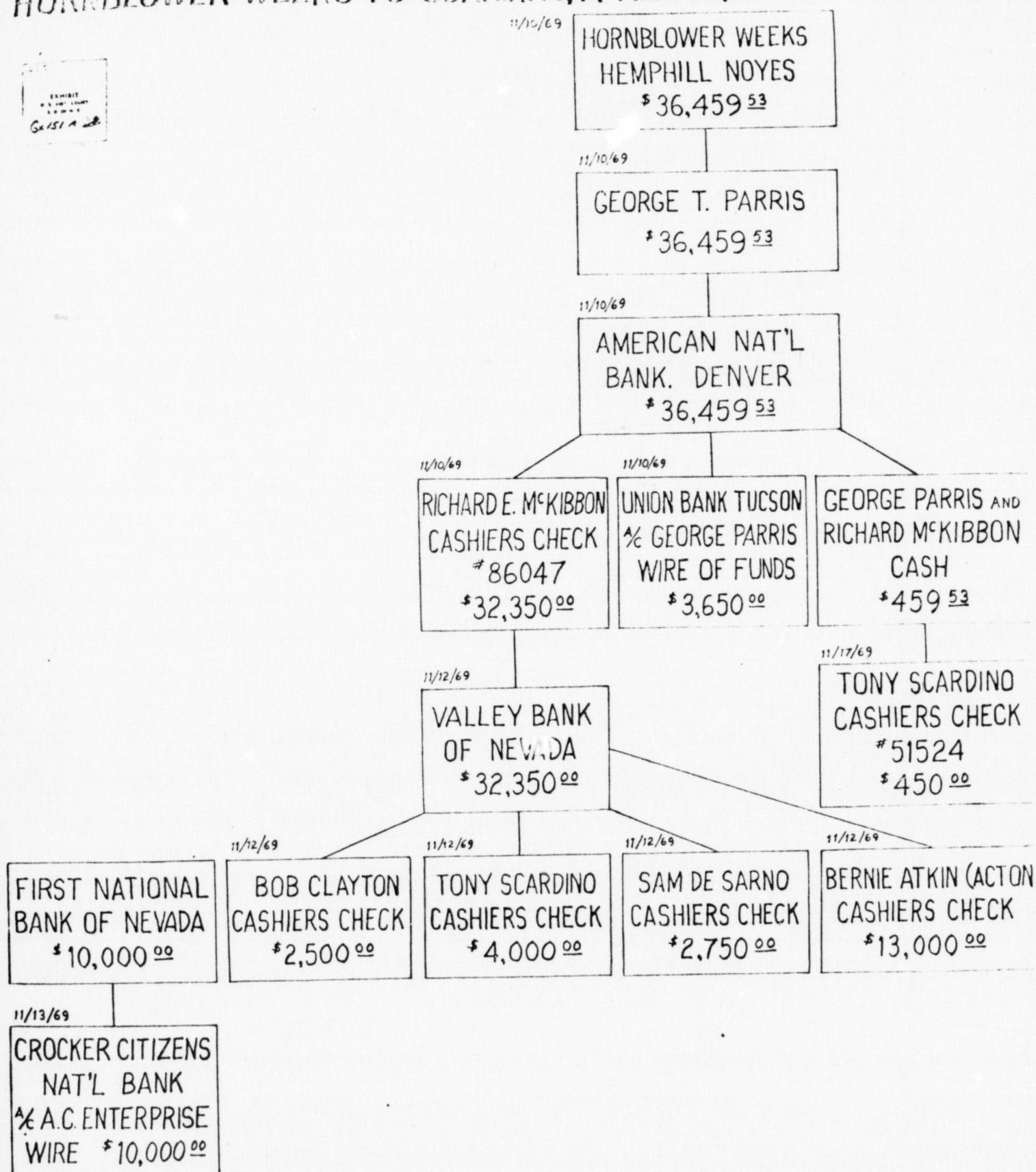
W. BROWN	4,500
J. GEDDES	500
M. HAROLD	1,250
C. HUNT	3,500
J.C. JARNER	5,000
H. KAIGHAN	6,600
F. LA VAN	1,000
B. I. MADSEN	8,000
B.V. MAPLES	5,000
E. MARIOT	20,000
R. MCKIBBON	18,000
B. MORGAN	4,500
D. MORGAN	5,500
C.M. PRICE	1,000
T. SCARDINO	11,000
J. SONNHALTER	400
T. VAN GIETZEN	3,200
J. WALKER	25,000
F. ZAHL	85,000

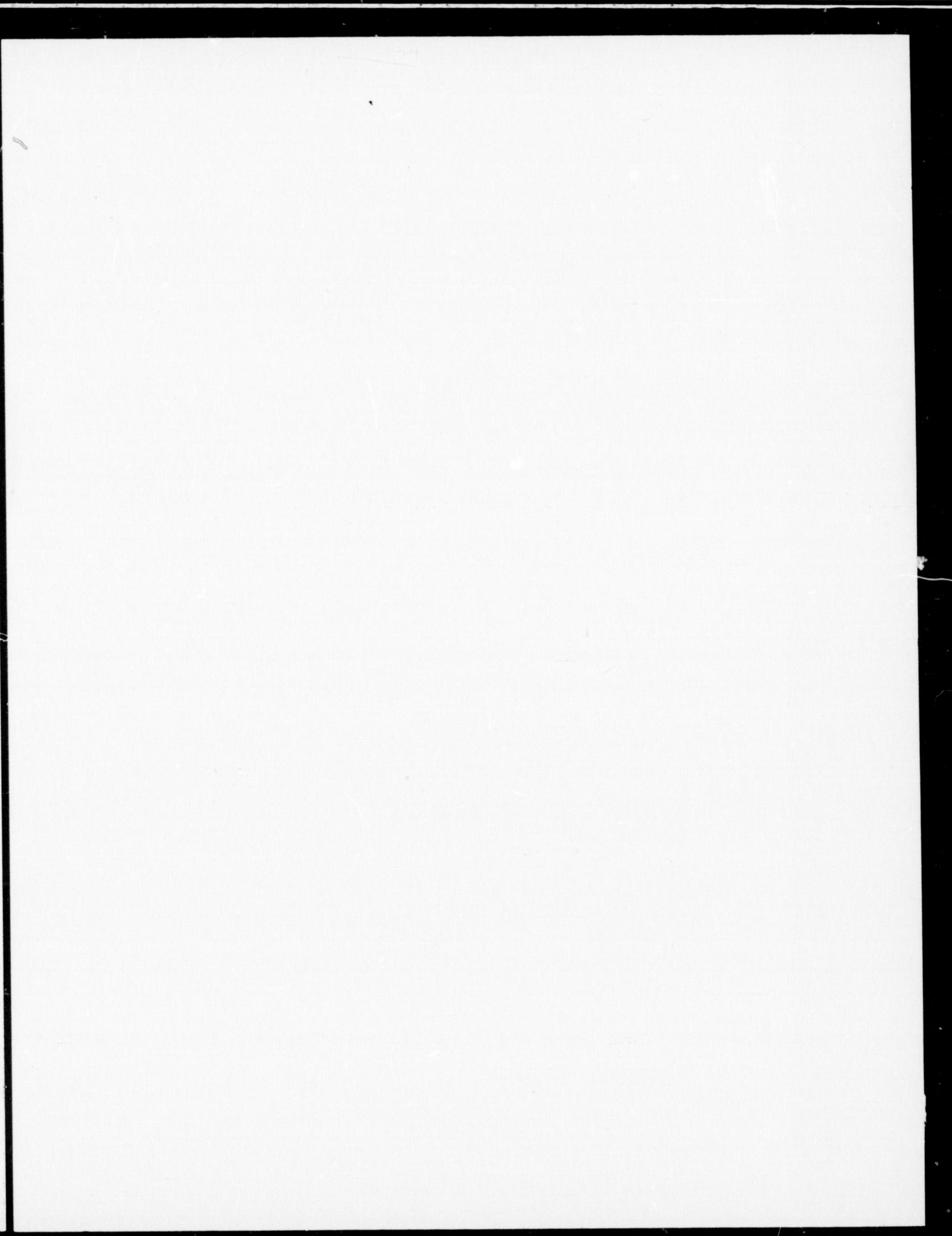
JA1538

JA1539

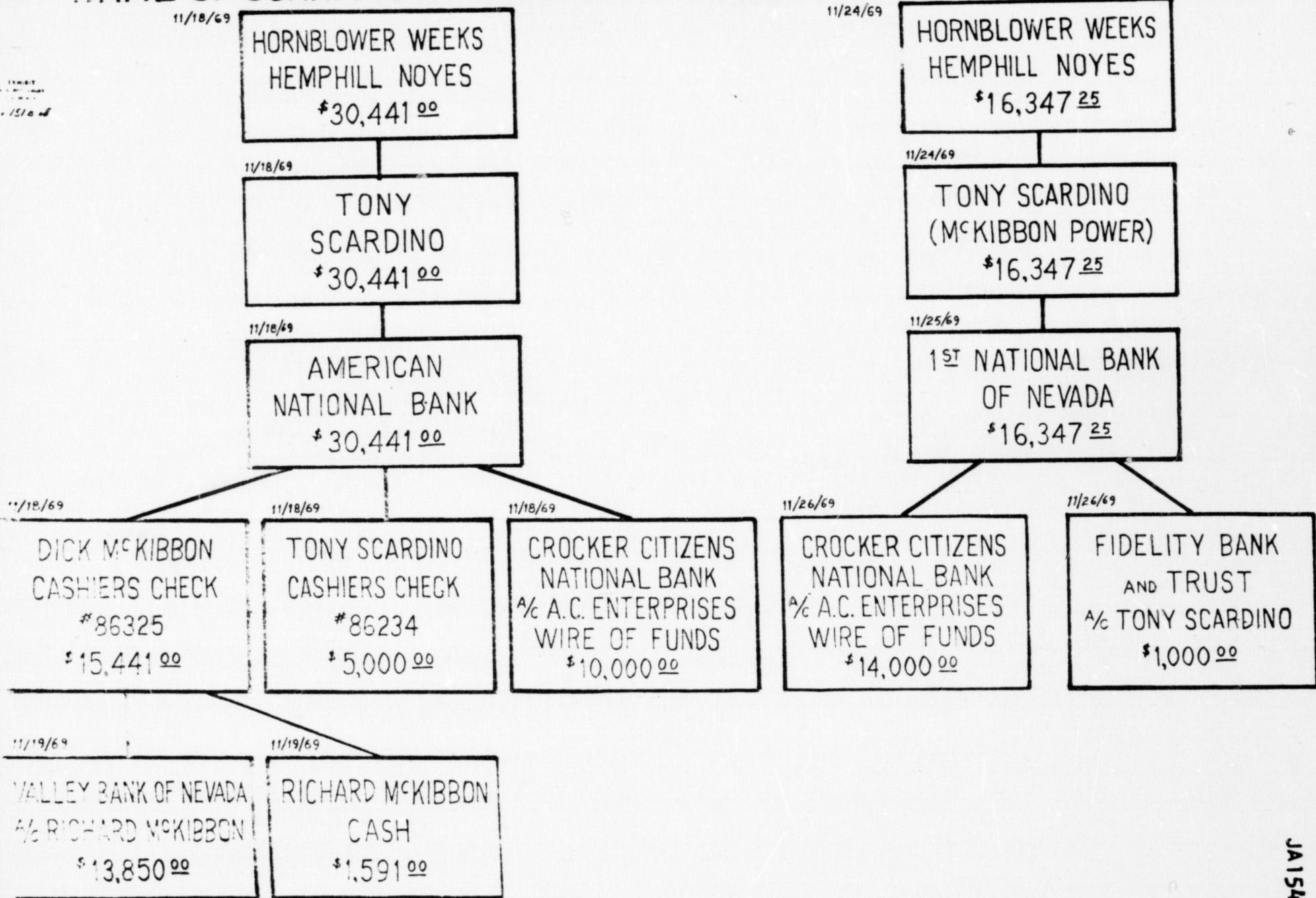
PROCEEDS OF SALE OF 5,000 PIONEER NAME OF SCARDINO AT  
HORNBLOWER WEEKS TO SCARDINO, MCKIBBON, ACTON AND OTHERS

EXHIBIT  
G-151-2





PROCEEDS OF SALE OF 6,000 PIONEER  
NAME OF SCARDINO AT HORNBLOWER, WEEKS TO SCARDINO, MCKIBBON, A-C.



JA1541

PART OF PROCEEDS OF SALE OF 13,500 POUNDS OF FOREER IN THE OF  
MCKIBBON AT HORNBLOWER, WEEKS TO SCARDINO AND MCKIBBON

EXHIBIT  
FBI - DENVER  
G-151c

12/16/69

HORNBLOWER WEEKS  
HEMPHILL NOYES  
\$ 79,150 00

12/16/69

RICHARD E. MCKIBBON  
  
\$ 79,150 00

12/16/69

AMERICAN NAT'L BANK  
DENVER COLO.  
\$ 79,150 00

12/16/69

RICHARD E. MCKIBBON  
CASHIERS CHECK  
#87567  
\$ 53,000 00

12/16/69

1<sup>ST</sup> NAT'L BANK (RENO)  
1/2 RICHARD MCKIBBON  
WIRE OF FUNDS  
\$ 20,000 00

12/16/69

FIDELITY BANK AND TRUST  
HOUSTON TEXAS  
1/2 A. SCARDINO  
WIRE FUNDS  
\$ 5,000 00

12/16/69

1<sup>ST</sup> NATIONAL BANK  
OF NEVADA  
\$ 53,000 00

JA1542

GOVERNMENT'S EXHIBIT 63A - COATS AND AMOUNT OF BILL

333-7th Ave. • New York, N.Y. 10001 • LW 4 0760

INVOICE  
NO.

SOLD  
TO

Edward Rubin

INVOICE  
DATE

The Play One Development

SHIPPED  
TO

L. Benthic life of the Philippines  
Fly. C.

Total + 42,000

JA1543

GOVERNMENT'S EXHIBIT 63B - COATS AND AMOUNT OF BILLS

*Robert Allen Grant*

JANUARY 10, 1970

I, ALLEN GRANT, DO HEREBY GIVE MR. EDWARD ZUBER THE EXCLUSIVE RIGHT AND OPTION TO BUY AT \$10.00 (TEN DOLLARS) A SHARE, THE TOTAL OF SIX THOUSAND NINE HUNDRED SHARES OF FREE TRADING, OVER THE COUNTER STOCK IN PIONEER DEVELOPMENT CORP., SAID OPTION TO START ON THE 12TH DAY OF JANUARY, 1970 AND ENDING ON THE 14TH DAY OF MARCH, 1970.

*Edward Zuber  
Allen Grant*

Witnessed  
Robert Grant

GOVERNMENT'S EXHIBIT 131 - ORDER OF CONLON, J. IN  
PEOPLE v. SEGAL, ET AL

JA1544

C.J.

At a Special Term, Part II  
of the Supreme Court of the State  
of New York, held in and for the  
County of New York, at the Court-  
house, Pearl and Centre Streets,  
Borough of Manhattan, State of  
New York on the 8<sup>th</sup> day of  
October , 1954

P R E S E N T :

HON. FRANCIS X. CONLON  
Justice.

-----x  
THE PEOPLE OF THE STATE OF NEW YORK, :  
Plaintiffs, : 41497/39  
-against- :  
ALAN IRVING SEGAL and ALAN ASSOCIATES :  
SECURITIES CORP., Defendants. :  
-----x

The plaintiffs having brought this action by the service of a summons and verified complaint upon the above named defendant for a judgment permanently enjoining and restraining said defendant from engaging in the issuance, offering for sale, sale, promotion, negotiation, advertisement and distribution to the public within and from the State of New York of securities and commodities as well as any other interests therein pursuant to Article 23-A of the General Business Law of this State.

NOW, on reading and filing the summons dated October 5, 1954 , and the complaint herein, verified the 5th day of October , 1954 , the affidavit of ORESTES J. MIHALY, Assistant Attorney General of the State of New York,

sworn to the 5th day of October , 1954 and the

Micro Film 1 part 201651

JA1545

consent of the defendants, it is

On Motion of LOUIS J. LEFKOWITZ, Attorney General of  
the State of New York, attorney for the plaintiffs,

ORDERED, ADJUDGED and DECREED that the above defendants  
be restrained and enjoined permanently from directly or indirectly  
engaging or attempting to engage in any business relating to the  
purchase and sale of securities or commodities with the public,  
within and from the State of New York; and from acting and en-  
gaging as agent, salesman or employee of any person, firm or cor-  
poration engaged in any business relating to the purchase and  
sale of securities or commodities with the public, within the  
State of New York; and from writing, publishing, preparing,  
selling and distributing any letter or other literature advising,  
suggesting or in any other manner communicating advice to the  
public within the State of New York with respect to the purchase  
or sale of securities or commodities and of the future price  
fluctuations of securities or commodities markets in general;  
and from forecasting, advising or in any other manner suggest-  
ing either orally or in writing any method or methods to be  
used in connection with the purchase or sale of securities or  
commodities, and from any act in aid or furtherance of the same,  
or in any attempt thereat; and it is further

ORDERED, ADJUDGED and DECREED, that the above defen-  
dants be restrained and enjoined permanently from directly or  
indirectly engaging or attempting to engage in the business of  
broker or dealer in securities within or from the State of New  
York, and from any act in aid or furtherance thereof; and en-  
gaging or attempting to act and engage as agent, salesman or  
employee of any broker or dealer in the securities business;  
and from acting as or being or attempting to act as or be a

stockholder, director, trustee, officer, member or employee of JA1546  
any corporation, association, syndicate, company, trust or other  
combination engaged in the securities business as brokers or  
dealers; and from being or attempting to be a partner or member  
(limited, dormant or otherwise) of any partnership, firm,  
association or person engaged in the securities business as bro-  
kers or dealers within or from the State of New York; and from  
any act in aid or furtherance of the same, or in any attempt  
thereat; and it is further

ORDERED, ADJUDGED and DECREED, that the above defend-  
ants be restrained and enjoined permanently from acting and en-  
gaging or attempting to act and engage as agent, broker, sales-  
man, owner, employee, stockholder, director, trustee, officer,  
associate or partner (limited, dormant or otherwise) of any cor-  
poration, company, association, trust, and representative of  
another or in any other capacity, or by or through any other per-  
son or agency, from the issuance or offering for sale, or sale,  
or promotion, or negotiation, or advertisement, or distribution,  
or purchase, to or from the public within or from the State of  
New York, of any negotiable documents of title, foreign cur-  
rency orders, calls, options, stocks, bonds, notes, evidences  
of interest or indebtedness and any other securities, including  
oil and mineral deeds and leases, or any interest therein, sold  
or transferred in whole or in part to the purchaser where the  
same do not effect a transfer of title in fee to the land, and  
including any commodity as defined in Section 352 of the General  
Business Law of the State of New York, issued and which may  
hereafter be issued by any person, partnership, corporation,  
company, trust or association and from any act in aid or fur-  
therance thereof, or in any attempt thereat; and it is further

ORDERED, ADJUDGED and DECREED, that the Attorney Gen-  
eral of the State of New York may make such further application

JA1547

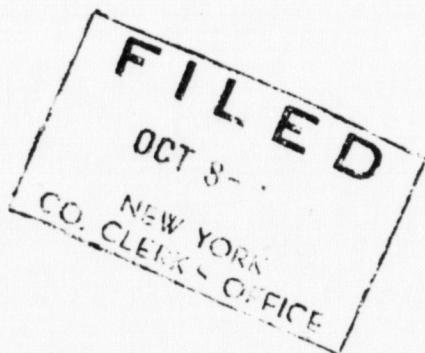
under the provisions of this judgment and decree or maintain any action for such other and further relief as plaintiffs may be advised is proper and necessary for the enforcement of this order, judgment and decree, all pursuant to Article 23-A of the General Business Law of the State of New York and of other provisions of law applicable thereto.

E N T E R

X  
J.S.C.

-4-

James Mc. Ginn  
Clark



JA1548

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

:  
Plaintiffs,

-against-

:  
SUMMONS

ALAN IRVING SEGAL and ALAN ASSOCIATES  
SECURITIES CORP.,

:  
Defendants

-----X

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and serve a copy of your Answer, or if the complaint is not served with the summons, serve a notice of appearance on the plaintiffs' attorney within twenty (20) days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated: New York, New York      October 5,      1959.

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for Plaintiffs  
Office & P.O. Address  
80 Centre Street  
New York 13, N.Y.

JA1549

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs,

-against-

: COMPLAINT

ALAN IRVING SEGAL and ALAN ASSOCIATES  
SECURITIES CORP.,

Defendants.

Plaintiffs, by LOUIS J. LERKOWITZ, Attorney General of  
the State of New York, complaining of the above named defendant,  
allege upon information and belief:

FIRST: That the defendant Alan Associates Securities  
Corp. is a domestic corporation organized and existing under and  
by virtue of the laws of the State of New York, on or about the  
18th day of August, 1958, with principal offices at 37 Wall Street  
in the City, County and State of New York.

SECOND: That since on or about the 18th day of August,  
1958 and up until the present time, the defendant Alan Associates  
Securities Corp. was engaged in the business of a broker and  
dealer in securities within the City, County and State of New York,  
maintaining its offices for such purpose at 99 Wall Street in the  
City, County and State of New York.

THIRD: That on or about the 5th day of March, 1959, the  
defendant Alan Associates Securities Corp. filed a dealer's state-  
ment with the Department of Law of the State of New York pursuant  
to and as required by Section 354-a of the General Business Law

JA1550

or the State of New York, and at all the times thereafter and up until the present time was and is a dealer in securities within the intent and meaning of Section 359-e of the General Business Law of the State of New York.

FOURTH: That the defendant Alan Irving Segal resides at 24 East 64th Street in the city, county and State of New York.

FIFTH: That the defendant Alan Irving Segal has been the president and majority stockholder of the defendant Alan Associates Securities Corp. from its inception to the present time and has controlled and dominated the business and financial affairs of the defendant Alan Associates Securities Corp.

SIXTH: That at least since the 1st day of September, 1959 and at all times thereafter and up until the present time, the defendant Alan Associates Securities Corp. was and is insolvent, in that the aggregate of its assets was and is not at fair valuation sufficient in amount to pay its debts, and the defendants well knew and had knowledge of such insolvency all during said period and fraudulently concealed the fact of such insolvency from the plaintiffs and the public generally.

SEVENTH: That at least since on or about the 1st day of September, 1959 and at all times thereafter and up until the present time, the defendants, while fraudulently concealing the fact that the defendant Alan Associates Securities Corp. was insolvent, in violation of law, induced the plaintiffs and the public generally to part with monies, securities and other valuable property in the course of their business as dealers in securities within and from the State of New York.

EIGHTH: That at all times hereinbefore and hereinafter mentioned, the defendants have been and are now employing certain other fraudulent practices in connection with the promotion, negotiation, advertisement, sale and distribution of securities within the intent and meaning of Article 23-A of the General Business Law of the State of New York.

NINTH: That the aforesaid acts and course of conduct by the defendants were and are fraudulent and in violation of law, and constitute fraudulent practices pursuant to and within the meaning of Article 23-A of the General Business Law of the State of New York.

TENTH: That as a result of the fraudulent practices of the defendants, the plaintiff's and the public generally were induced to part with monies, securities and other valuable property, in reliance thereon to their loss and damage.

ELEVENTH: That the plaintiff's and the public generally have been and are being irreparably damaged and have no adequate remedy at law.

WHEREFORE, it is respectfully prayed that the defendants be permanently enjoined from ever again engaging in the securities business directly or indirectly within or from the State of New York.

\*  
LOUIS J. LERKOWITZ  
Attorney General of the  
State of New York  
Attorney for Plaintiff's  
Office & P. O. Address  
80 Centre Street  
New York 13, N. Y.

STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK )

ORESTES J. MHALY,

being duly sworn,

deposes and says:

I am an Assistant Attorney

General of the State of New York, and one of the plaintiffs in  
the within action.

I have read the foregoing complaint and know the  
contents thereof, and the same is true to my own knowledge except  
as to those matters said to be alleged on information and belief,  
and as to those matters I believe it to be true.

The sources of my information and the grounds of my  
belief are investigations made by me on behalf of the Attorney  
General, together with exhibits and records filed with the  
Attorney General's office.

Sworn to before me this  
5th day of October, 1954.

Orestes J. Mhaly  
Assistant Attorney General  
of the State of New York

ORESTES J. MHALY

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

JA1553

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs,

Affidavit

-against-

ALAN IRVING SEGAL and ALAN ASSOCIATES  
SECURITIES CORP.,

Defendants.

STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

ORESTES J. MIHALY, being duly sworn, deposes and says:

That I am an Assistant Attorney General of the State of New York in the Department of Law of the State of New York, assigned to the Bureau of Securities at 80 Centre Street in the City, County and State of New York, and am in charge of the above entitled action.

That pursuant to Article 23-A of the General Business Law of the State of New York, I have made an investigation of the practices of the above named defendants in the issuance, sale, promotion, negotiation, advertisement and distribution of securities within and from the State of New York.

That I have examined numerous witnesses and various books, records and documents relating to said investigation and as a result of said examination, make the following statements on information and belief:

The defendant Alan Associates Securities Corp. was organized by the defendant Alan Irving Segal as a New York Corporation on or about the 10th day of August, 1958, and conducted business at 99 Wall Street as a broker dealer in securities within and from the State of New York.

Since its inception, the corporate defendant, under the domination and control of its president and principal stockholder, sold thousands of dollars worth of securities to the public within and from the State of New York.

Since September 1, 1959, the corporate defendant has been insolvent and the fact of such insolvency has been concealed from the public by both defendants while they have engaged in the securities business within and from the State of New York.

The concealment of such insolvency while engaged in the securities business is a fraudulent practice within the meaning and intent of Article 23-A of the General Business Law.

In addition, this office has conducted an investigation into the activities of Arthur Tortorello and Stanley Younger, persons who have been enjoined from the securities business in the State of New York. This investigation has revealed that Stanley Younger and Arthur Tortorello were instrumental in arranging for the sale of the securities of U&R Electronics by the defendants during the month of August, 1959.

The defendant Alan Irving Segal has testified under oath that he allowed an individual to sell the stock of U&R Electronics from his office at 99 Wall Street to persons residing in the State of Texas. These persons had already purchased stock of U&R and the premises of Alan Associates Securities Corp. was used to "load"

JA1555

these stockholders.

A raid by members of the Staff of the Attorney General and Detectives of the Safe Loft and Truck Squad of the New York City Police which resulted in the arrest of the aforementioned Arthur Tortorello and Stanley Younger on or about the 1st day of September, 1959, resulted in the virtual stoppage of the distribution of the securities of C&F Electronics. Alan Irving Segal has testified under oath that he has been unable to make deliveries on the sales of C&F Electronics effected at his premises.

Your deponent is of the opinion that it is to the best interests of the People of the State of New York, that an injunction be issued by this Court, restraining and enjoining the defendants as prayed for in the complaint.

No previous application for the relief sought herein has been made to this Court or any other Court or Justice.

Sworn to before me this  
5th day of October, 1959.

Arnold J. Conrad  
Assistant Attorney General  
of the State of New York

R. H. Kelly

RECEIVED  
CITY OF NEW YORK  
CITY ATTORNEY'S OFFICE  
OCT 6 1959

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----x

THE PEOPLE OF THE STATE OF NEW YORK, :  
Plaintiffs, :  
-against- :  
**ALAN IRVING SEGAL and ALAN ASSOCIATES** : CONSENT  
**SECURITIES CORP.,** Defendants. :  
-----x

I, **ALAN IRVING SEGAL,**  
a resident of <sup>301 E 66th</sup> ~~42 East 44th~~ Street, New York, N.Y.  
as President of the **Alan Associates Securities Corp.**

do hereby acknowledge that I have received  
a copy of the foregoing proposed judgment of permanent injunc-  
tion and a copy of the summons and complaint and affidavit  
annexed thereto.

I hereby acknowledge service of each of the same upon  
me as President of **Alan Associates Securities Corp.**

Corporation.

I further acknowledge that I have read each of said  
papers and know the contents thereof.  
Corporation does hereby consent to the entry of the foregoing  
judgment of permanent injunction without further notice. I  
execute the consent herein, on behalf of said corporation, upon  
authority vested in me by order of the Board of Directors of  
said corporation.

\* \* \* **Alan Associates Securities Corp. ~~consent~~**  
does acknowledge that this consent is its own free and voluntary  
act, and that no offers, agreements or inducements of any  
nature whatsoever have been made to it or to any of its of-  
ficers or directors by the plaintiffs herein or by their at-  
torney to procure this consent.

JA1557

As President of **Alan Associates Securities Corp.**  
on its behalf, I do hereby execute this consent  
with the knowledge that the effect of said proposed judgment  
of permanent injunction when signed and entered is to forever  
enjoin and restrain said corporation from engaging in any act  
or transaction whatsoever relating to the purchase or sale of  
securities within and from the State of New York.

*(This corporation does, and the signature contained in this  
consent, and which is attached, permanent  
injunction and name all our right to a trial in the courts)*

Dated: New York, New York, October 6, 1959.

ccip.

ALAN ASSOCIATES SECURITIES CORP.

BY

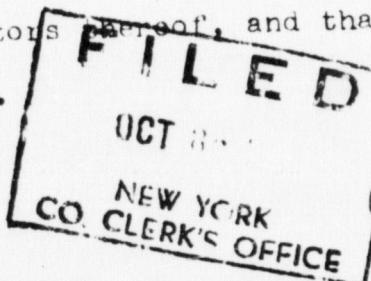
(SEAL)

Alan Irving Segal  
PRESIDENT

STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK)

On this 7th day of October , 1959, before  
me personally came **ALAN IRVING SEGAL**  
to me known as President of **ALAN ASSOCIATES SECURITIES CORP.**

a corporation described in and which executed the foregoing con-  
sent, and he stated that he knows the seal of said corporation,  
that the seal affixed to said instrument is the seal of said  
corporation, that it was so affixed by order of the Board of  
Directors ~~hereof~~, and that he signed his name thereto by like  
order.



K. C. G. / J. L. L.

JA1558

THE PEOPLE OF THE STATE OF NEW YORK, :  
Plaintiffs, :  
-against- : CONSENT  
**ALAN IRVING SEGAL** :  
Defendant . :  
-----x

*301 E 66<sup>th</sup> S*  
I, ALAN IRVING SEGAL, residing at ~~42 East 64th Street,~~  
New York, N.Y., hereby consent to the entry of the foregoing proposed judgment of permanent injunction without further notice and hereby acknowledge receipt of a copy thereof together with receipt of a copy of the summons and complaint and affidavit. I further acknowledge that I have read and understand the aforementioned papers.

My consent herein is a free and voluntary act and no offers, agreements or inducements of any nature whatsoever have been made to me by the plaintiffs herein or their attorney to procure my consent.

I do hereby execute this consent with the knowledge that the effect of said proposed judgment of permanent injunction, when signed and entered, is to forever enjoin and restrain me from engaging in any act or transaction whatsoever relating to the purchase or sale of securities within and from the State of New York.

*I deny all the allegations contained in the foregoing paper but nevertheless consent to the attached permanent injunction and warrant my signature unto the moment*

Dated: New York, New York

October 6, 1959.

*Alan Irving Segal*

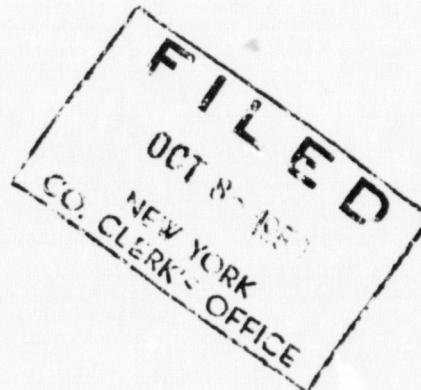
JA1559

STATE OF NEW YORK )  
:   
COUNTY OF NEW YORK )

On this 7<sup>th</sup> day of October , 1959 ,

before me personally came ALAN IRVING SEGAL  
to me known and known to me to be the individual mentioned and  
described in and who executed the foregoing consent to the entry  
of the proposed judgment of permanent injunction and he thereupon  
duly acknowledged to me that he executed the same.

Dante Nobile



JA1560

OFFICE  
CAB

CENTRAL  
CO.

STATE OF NEW YORK  
COUNTY OF NEW YORK

that he is

State of New York, the Attorney for

day of

1958, do serve the annexed upon the following named persons:

in the office of the Attorney General of the State of New York, being duly sworn, deposes and says:

that he is an attorney in the office of the Attorney General of the United States at Washington, D.C., and regularly maintained by the Government of the United States at Washington, D.C.

Mr. Louis J. Lefkowitz, Attorney for Plaintiff, directed to send Attorney at the address within the State designated by

for this purpose:

Plaintiffs, me the day of

, 1958

Assistant Attorney General of

the State of New York

FILED  
OCT 8 1958  
AT 10 AM M  
N.Y. CO. CLK'S OFFICE

SUPREME COURT OF THE STATE  
OF NEW YORK  
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF  
NEW YORK, Plaintiffs,

-Against-

ALAN ASSOCIATES SECURITIES  
CORP. and ALAN IRVING SEGAL  
Defendants.

(ORIGINAL)

JUDGMENT, SUMMONS, COMPLAINT,  
AFFIDAVIT and CONSENT

LOUIS J. LEFKOWITZ  
Attorney General

Attorney for Plaintiffs

OFFICE AND POST OFFICE ADDRESS  
CAPITOL BLDG.  
NEW YORK OFFICE  
80 CENTRE STREET, NEW YORK 13, N. Y.

Personal service of a copy of

within

is admitted this day of

1958

MOTION BY DEFENDANT EDWARD ZUBER FOR JUDGMENT OF ACQUITTAL JA1561  
OR FOR NEW TRIAL AND POINTS IN SUPPORT THEREOF

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 879-5800

5 Attorneys for Defendant  
6 EDWARD ZUBER

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF NEW YORK

10  
11 UNITED STATES OF AMERICA, ) No. 74 CR 908 (LM)  
12 Plaintiff, ) MOTION FOR JUDGMENT OF ACQUITTAL  
13 vs. ) AND/OR MOTION FOR NEW TRIAL;  
14 EDWARD ZUBER, et al, ) POINTS AND AUTHORITIES IN SUPPORT  
15 Defendants. ) THEREOF.  
16

17 Defendant, EDWARD ZUBER, respectfully moves this Court  
18 for an order to set aside the verdict of guilty on Count Twenty-nine  
19 entering a Judgment of Acquittal, or, in the alternative, to grant  
20 a new trial, based upon the following reasons:

21  
22 1. THE GOVERNMENT FAILED TO DISCLOSE DAMAGING  
23 BRADY MATERIAL RELATING TO THE CREDIBILITY,  
24 MOTIVE AND BIAS OF ITS CHIEF WITNESS, MICHAEL  
25 GARDNER, IN SPITE OF THE COURT'S CONTINUING  
26 ORDER TO FURNISH THE DEFENSE WITH ALL BRADY  
27 MATERIAL.

28  
29 The attached exhibits reflect the information which the  
30 Government had in its possession on the eve of Mr. Gardner's  
31 testimony, but failed to furnish:

1      Exhibit 1 - Indictment filed in 1974 - United States of  
2      America v. Michael Gardner, Criminal No. 74-  
3      CR-573, Southern District of New York.

4      Exhibit 2 - Government's Answer to Defendant Gardner's  
5      Motion to Dismiss the Indictment filed November  
6      23, 1973 - United States of America v. Michael  
7      Gardner, Criminal No. 73-612, United States  
8      District Court of Illinois, Eastern Division.

9      Exhibit 3 - Transcript of Proceedings of April 19, 1974 -  
10     United States of America v. Michael Gardner,  
11     Criminal No. 73-612, United States District  
12     Court of Illinois, Eastern Division.

13     Exhibit 4 - Statement in Aggravation filed April 2, 1974 -  
14     United States of America v. Michael Gardner,  
15     Criminal No. 73-612, United States District  
16     Court of Illinois, Eastern Division.

17     Exhibit 5 - Government's Motion to Reconsider its Order of  
18     January 31, 1974 - United States of America v.  
19     Michael Gardner, Criminal No. 73-612, United  
20     States District Court of Illinois, Eastern  
21     Division.

22     Exhibit 6 - Transcript of Proceedings of December 10, 1973 -  
23     United States of America v. Michael Gardner,  
24     Criminal No. 73-CR-167, Southern District of  
25     New York

26     Exhibit 1 - The indictment of Mr. Gardner, filed in 1974, was  
27     not brought to the attention of counsel in the Court below until  
28     just before Mr. Gardner was called to testify. This information  
29     should have been given to the Defendant in time enough to at least  
30     investigate it, or alternatively, the Defendant should have been  
31     furnished the entire "Gardner" information, infra.

32     Exhibit 2 - The Government's Answer to Defendant Gardner's  
33     Motion to Dismiss states that Gardner had been granted immunity  
34     (later apparently withdrawn) in the Chicago proceedings (at page  
35     3). It would appear that the Government well knew that Mr.  
36     Gardner had been granted immunity (later withdrawn) in that case,  
37     but this was information not disclosed to the Defendants.  
38     (Emphasis supplied.)

1        Exhibit 3 - During a Sentencing Hearing before Judge Austin  
2        it was brought to the Court's attention that Mr. Gardner had  
3        apparently been granted immunity by the Government (p.15) and  
4        apparently the Government had taken the position that Mr. Gardner  
5        was planning to lie, or had knowledge that he was going to lie,  
6        before the Grand Jury and therefor withdrew the immunity (p. 16).  
7        It would appear that the Government had substantial prior know-  
8        ledge of inculpatory material pertaining to the witness Gardner's  
9        motive, bias and credibility, which the Government for reasons of  
10      their own failed to disclose.

12      Exhibit 4 - In the Government's Statement in Aggravation it  
13      is suggested that the Government was aware that Mr. Gardner had  
14      allegedly stolen Tennessee Valley Authority Bonds, and that he  
15      had also sold Three Hundred Thousand Dollars (\$300,000.00) worth  
16      of stolen Westinghouse Electric stock (p.2-3). The Government  
17      also suggests that they had knowledge that in the Spring of 1973,  
18      Mr. Gardner attempted to "set up" a witness against him (p. 4) and  
19      that the Government characterized this as an "attempt to tamper  
20      with the judicial process" (p. 5). It seems astonishing that this  
21      information was not known to Assistant United States Attorney  
22      Walker so that it could have been given to counsel for the Defen-  
23      dants for their views and/or investigation into the credibility,  
24      motive or bias of the Government's major witness.

25  
26      Exhibit 5 - The Government's Motion for Reconsideration  
27      demonstrates that, in fact, Mr. Gardner had been granted immunity  
28      in the United States District Court of Illinois on June 12, 1973,  
29      (p. 1) several months before his appearance in the present matter.  
30      This is compounded by the fact that the Government seems to suggest  
31      that they then became aware that Mr. Gardner had either given a  
32      false statement or that he was going to perjure himself before the

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 879-5800

1 Grand Jury (p.2 - 4). For this reason, the Government apparently  
 2 withdrew the immunity. In any event, this information is more  
 3 than telling on the credibility of this witness and the apparent  
 4 knowledge of the Government that its witness in the present trial  
 5 had been granted immunity in June of 1973, and then in the same  
 6 month, the United States Attorney had, what he considered, pro-  
 7 bable cause to believe that the witness was either going to per-  
 8 jure himself or had, in fact, given a false statement to the  
 9 Federal Bureau of Investigation.

10

11

12       Exhibit 6 - It seems more than astonishing at this point that  
 13 Mr. Walker was not aware of this information since his associate,  
 14 Assistant United States Attorney Putzel, in December 1973, related  
 15 some of this "Chicago information" to Judge Bauman during Mr.  
 16 Gardner's sentencing. There is no excuse for Mr. Walker's failure  
 17 to furnish the foregoing material.

18

2.       THE COURT ERRED IN DENYING DEFENDANT ZUBER'S  
 3.       MOTION FOR SEVERANCE.

4.       Said motion was based upon the fact that Mr. Zuber  
 5 could only obtain exculpatory testimony of co-defendants Finkel-  
 6 stein and Segal if a severance were granted. This testimony went  
 7 directly to Mr. Zuber's lack of knowledge of manipulative devices  
 8 and/or fraud employed in the sale of Pioneer stock. This testimony  
 9 would have been buttressed by an exculpatory polygraph examination.

26

27.       THE COURT ERRED IN CHARGING THE JURY UNDER THE  
 28.       PINKERTON RATIONALE THAT IF A DEFENDANT JOINED  
 29.       A CONSPIRACY HE WAS LIABLE FOR SUBSTANTIVE CRIMES  
 30.       COMMITTED PRIOR TO HIS MEMBERSHIP. United States  
 31.       v. Levine, 383 U.S. 265, 86 S.Ct. 925 (1966).

KIRSCHNER & GREENBERG  
 FOURTH FLOOR AVCO CENTER  
 10850 WILSHIRE BOULEVARD  
 LOS ANGELES, CALIFORNIA 90024  
 (213) 474-6555 • 879-5800

1 4. CROSS-EXAMINATION OF PROSECUTION WITNESSES  
2 WAS UNDULY RESTRICTED.

3  
4 5. THE VERDICT OF GUILTY AS TO MR. ZUBER IS  
5 NOT SUPPORTED BY SUFFICIENT EVIDENCE.

6  
7 There was no evidence to demonstrate Mr. Zuber had  
8 knowledge of a manipulative device, or fraud, in connection with  
9 Pioneer stock.

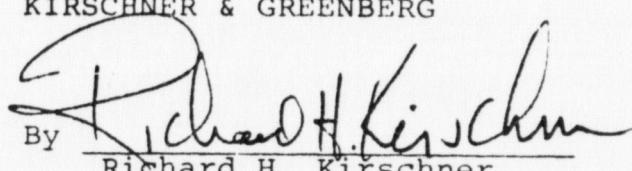
10  
11 6. THE COURT ERRED IN REFUSING TO DISMISS THE  
12 INDICTMENT BASED ON A LACK OF SPEEDY PROSE-  
13 CUTION.

14  
15 7. THE COURT ERRED IN REFUSING TO STRIKE HIGHLY  
16 PREJUDICIAL AND EXTRANEous ALLEGATIONS IN  
17 THE INDICTMENT WHICH WERE NOT SUPPORTED BY  
18 ANY EVIDENCE.

19  
20 Specifically, the allegation that Mr. Zuber was "not  
21 regularly employed" during the course of events alleged in the  
22 indictment.

23  
24 DATED: JANUARY 14, 1975  
25

26 KIRSCHNER & GREENBERG

27 By   
28 Richard H. Kirschner

29 Attorneys for Defendant,  
30 EDWARD ZUBER.  
31

**MEMORANDUM OF POINTS AND AUTHORITIES**

JA1566

1. FAILURE OF THE GOVERNMENT TO DISCLOSE  
BRADY MATERIAL.

The rule of Brady v. Maryland, 373 U.S. 83 (1963), requires that the Government supply evidence useful to the defendant. Accordingly, it is the Government who should be coming forward on its own initiative and making this Motion since they should have an overriding interest in the propriety of the trial before this Court. Certainly the Government cannot provincially compartmentalize itself so as to cavalierly suggest that the knowledge of the Government in Chicago, Illinois, is not the knowledge of the Government in New York, especially considering the facts of this particular case and the representations by the Government to this Court at the time of trial. United States v. Bryant, 142 U.S. pp. D.C. 132, 140, 439 F.2d 642 (1971); United States v. Duetsch, 475 F.2d 55 (5th Cir. 1973).

The Court directed the Government to turn over all Brady material. The Government further led the Court to believe that it had no such material, or, in the alternative, that it had furnished such material.

A comparison of the representations of the Government with Defendant's Exhibits 1 through 6 seem to reflect, at the very least, less than full disclosure in this regard.

Indeed, in the interest of justice, it appearing that  
the Government was so substantially in control of facts and information which they knew to be exculpatory of the accused, then it should follow that in this case it is unconscionable to allow the

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 879-5800

1 Government to proceed further since it has so irretrievably JA1567  
2 prejudiced the right of this Defendant to a fair trial. United  
3 States v. Banks, 374 F. Supp. 321 (W.D.S.D., 1974).

4

5 2. SEVERANCE.

6

7 An adequate showing for severance was made both before  
8 and during the trial of this matter on at least four separate  
9 occasions. The basis for the motion was exculpatory co-defendant  
10 testimony, and its denial resulted in the denial of a fair trial.  
11 By affidavit of co-defendant Finkelstein and statements made by  
12 defense counsel in open court in the presence of Messrs. Finkel-  
13 stein and Segal, and their lawyers, a complete showing justifying  
14 a severance for Mr. Zuber was made. The record will demonstrate  
15 the following:

16 1) The explicit nature of Finkelstein and Segal's  
17 exculpatory testimony;

18 2) That Finkelstein and Segal would, in fact, testify  
19 on behalf of Zuber if a severance were granted.

20

21 In the case at bar there was no direct evidence demon-  
22 strating guilty knowledge by Mr. Zuber. Rather, if there was any  
23 evidence, it was wholly circumstantial. Certainly direct evidence  
24 in the form of testimony of the man who introduced him to Pioneer,  
25 Mr. Finkelstein, and the man who allegedly masterminded the  
26 manipulation, Mr. Segal, stating Mr. Zuber had no knowledge of the  
27 manipulation was crucial to the presentation of the defense.

28

29 In United States v. Martinez, 486 F.2d 15, 22 (5th Cir.  
30 1973), the Court, faced with precisely this issue, concluded,

31

32 "The question then is whether depriving

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 879-5800

"one defendant of the opportunity to use the JA1568  
exculpatory testimony of a co-defendant amounts  
to 'prejudice resulting in the denial of a fair  
trial.' Byrd v. Wainwright, 5 Cir. 1970, 428 F.  
2d 1017, was a state habeas corpus case, governed  
by 14th Amendment Due Process considerations rather  
than by the corresponding relief from prejudicial  
joinder provisions of Rule 14, F.R. Crim.P. But  
the criteria are similar, and in Byrd this circuit  
was presented with the opportunity to consolidate and  
catalogue our prior rulings for the guidance of trial  
judges confronted with motions for severance based  
on a desire to offer exculpatory testimony of a co-  
defendant. Byrd set forth the following guidelines:  
(i) the movant should 'show that testimony would be  
exculpatory in effect'; we cautioned that such a  
showing would not require the equivalent of a state-  
ment under oath by the co-defendant whose testimony  
was sought, op.cit. at 1020; Smith v. United States,  
supra, at 38; (ii) the movant should show to the  
court's satisfaction that the co-defendant will in  
fact testify; in this respect we cautioned that  
'the inquiry is not as to certainty whether the co-  
defendant will or will not testify but the likeli-  
hood;' op.cit. at 1022; Smith, supra, at 38; and  
(iii) we indicated that the trial judge might pro-  
perly consider the exculpatory nature and the sig-  
nificance of the desired testimony to the movant's  
defense, which 'might be restated in terms of the  
extent of potential prejudice to the defendant if  
the defendant is tried without the opportunity to  
elicit the co-defendant's testimony.' op.cit. at

1 "1020; United States v. Echeles, 7 Cir.

JA1569

2 1965, 352 F.2d 892, 897-898.

3       "There appears to be little doubt that  
4       conditions (i) and (ii) above were satisfied  
5       in the present case. Counsel for Martinez  
6       and Huila made the following statement to the  
7       court as to Martinez planned testimony when  
8       he renewed the severance motion during the  
9       trial at the close of the government's case  
10      in chief:

11       '. . . the defendant Martinez, if  
12       he were severed from this trial,  
13       would testify on behalf of the de-  
14       fendant Huila and exculpate him  
15       from any involvement in the matters  
16       which Huila is charged with. But,  
17       under the circumstances, he cannot  
18       take the stand because he is a de-  
19       fendant and will only inculpate him-  
20       self.'

21       "The importance of Martinez' excul-  
22       pative testimony to Huila's defense is ap-  
23       parent. The crucial question as to Huila  
24       was whether he had knowledge, either of the  
25       plan to import the marijuana, or that the  
26       package which he took from the M/V MONTEGO  
27       and placed on the dock actually contained  
28       marijuana. Martinez was the only individual  
29       other than Huila himself in a position directly  
30       to rebut the government's circumstantial evi-  
31       dence of Huila's knowledge of these facts."

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-8555 • 879-8800

1                   3. THE PINKERTON RATIONALE DOES NOT  
2                   APPLY TO SUBSTANTIVE CRIMES COM-  
3                   MITTED PRIOR TO DEFENDANT'S JOIN-  
4                   ING A CONSPIRACY.

JA1570

5  
6                   The Court instructed the jury that if a defendant were  
7                   found guilty of the conspiracy charge, he could also be found  
8                   guilty of substantive crimes committed by others in furtherance  
9                   of the conspiracy prior to his joining the conspiracy. The law is  
10                  to the contrary. In fact, the Court refused to grant a Judgment  
11                  of Acquittal on Counts 17, 18, 19, 21, 22, 23, 30, 32, 33, 34, 37,  
12                  39, 40 and 41. The date in each of these counts is prior to Mr.  
13                  Zuber's becoming involved with Pioneer. As the Court will recall,  
14                  all of the Government's testimony indicated Mr. Zuber did not  
15                  become acquainted with Pioneer until late December, 1969.

16  
17                  Assistant United States Attorney Walker erroneously  
18                  argued to the Court that Mr. Zuber was responsible for substantive  
19                  crimes committed by others prior to his joining the conspiracy,  
20                  under the authority of Pinkerton v. United States, 328 U.S. 640.

21  
22                  The United States Supreme Court, in 1966, specifically  
23                  held Mr. Walker's argument to be fallacious.

24  
25                  In Levine v. United States, 383 U.S. 265, 86 S.Ct. 925,  
26                  15 L.Ed. 2d 737 (1966), a case involving a conspiracy count under  
27                  §17 of the Securities Act of 1933 and of the Mail Fraud Statute,  
28                  and nine counts of substantive offenses of these acts, the Soli-  
29                  citor General conceded at p. 926:

30  
31                  ". . . an individual cannot be held  
32                  criminally liable for substantive offenses

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 879-5800

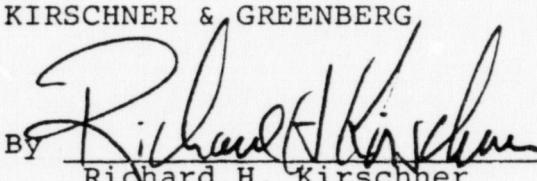
JA1571

1 "committed by members of the conspiracy  
2 before that individual had joined. . .  
3 the conspiracy."

4  
5 DATED: JANUARY 14, 1975  
6

7 Respectfully Submitted,  
8

9 KIRSCHNER & GREENBERG  
10

11 BY   
12 Richard H. Kirschner

13 Attorneys for Defendant,  
14 EDWARD ZUBER.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10880 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 879-8800

REQUESTS TO CHARGE IN BEHALF OF DEFENDANT SCARDINO JA1572

[COURT NOTATIONS BELOW]

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

74 Cr. 908

BURNEY ACTON, et al,

Defendants

The defendant Anthony Scardino respectfully requests  
the Court to include the following in its charge to the jury:

I.

~~The instructions from Devitt and Blackmar as stated in  
the defendant Edward Zuber's Proposed Jury Instructions.~~

II.

~~The following special instructions from defendant Edward  
Zuber's Proposed Jury Instructions: numbers 1, 4, 9 and 20.~~

III.

~~The following special instructions from defendant Alan  
Segal's requested jury instructions: numbers 8, 18, 20 and 21.~~

Respectfully submitted,

PAPE & MALLETT  
Attorneys for Defendant  
Anthony Scardino  
1929 Allen Parkway  
Houston, Texas 77019

## REQUESTS TO CHARGE IN BEHALF OF DEFENDANT ZUBER

JA1573  
(SPACE BELOW FOR FILING STAMP ONLY)

1 KIRSCHNER & GREENBERG  
2 FOURTH FLOOR AVCO CENTER  
3 10850 WILSHIRE BOULEVARD  
4 LOS ANGELES, CALIFORNIA 90024  
5 (213) 474-6555 • 879-5800

6  
7 Attorneys for Defendant  
8 EDWARD ZUBER

[COURT NOTATION]

ALL DECLINED  
IN FORM REQUESTED  
AND DELIVERED IN  
INSTANCE WHERE  
APPLICABLE

## UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

10  
11 UNITED STATES OF AMERICA, ) No.  
12 Plaintiff, ) DEFENDANT EDWARD ZUBER'S  
13 v. ) PROPOSED JURY INSTRUCTIONS  
14 EDWARD ZUBER, et al., )  
15 Defendants. )  
16 \_\_\_\_\_ )

I

All <  
17 Defendant Edward Zuber respectfully requests the Court  
18 to include in its charge to the jury the following instructions  
19 found in Devitt and Blackmar, Federal Jury Practice and Instructions  
20 (2nd Ed.), Part II, General Instructions for Federal Criminal  
21 Cases.

22 10.15 - Province of the Court.

23 10.16 - Instructions Apply to Each Defendant.

24 10.17 - Province of the Jury.

25 11.02 - Indictment but an Accusation -- Direct Evidence  
26 --Circumstantial Evidence

27 11.09 - Willfully to "Cause" Criminal Act -- Defined.

28 11.27 - Opinion Evidence -- Expert Witness.

29 11.28 - Opinion Evidence -- Accounts -- Charts --  
30 Summaries.

31  
32

1           If you decide that the government has failed to prove,  
 2 beyond a reasonable doubt, the existence of one overall  
 3 conspiracy the purpose of which was to secure control of many  
 4 thousands of shares of unregistered stock of Pioneer, then to  
 5 establish an artificial market in the stock through manipulative  
 6 devices including, quotes at arbitrarily selected prices, touting,  
 7 giving assurances against loss, and directing trades, and then  
 8 finally to sell, pledge and distribute this unregistered stock at  
 9 artificially high prices . . . you must acquit all the defendants  
 10 on Count I.

11           On the other hand, if you are satisfied, beyond a  
 12 reasonable doubt that the government has proven one overall  
 13 conspiracy, as charged, then the second and most important  
 14 element which you must next decide, as to each defendant separately  
 15 is whether the government has proved, beyond a reasonable doubt,  
 16 that he knowingly and intentionally joined or became a member of  
 17 a conspiracy with knowledge of its unlawful purpose.

18           The mere fact, however, that a defendant may be  
 19 present at meetings, or associated with members of the conspiracy  
 20 is not in and of itself enough to make him a conspirator, unless  
 21 you first find beyond a reasonable doubt that he intentionally,  
 22 joined a conspiracy with knowledge of its unlawful purpose.

23           Those who came in later, with knowledge of the aims  
 24 and purposes of the conspiracy, and cooperate in a common effort  
 25 to obtain the unlawful results become parties to the conspiracy.

26           All of the conspirators need not be acquainted with each  
 27 other. They may not have previously associated together. One  
 28 may become a member of a conspiracy without full knowledge of all  
 29 of the means by which the object of the conspiracy is to be  
 30 accomplished. One defendant may know only one other member of the  
 31 conspiracy, yet, if he knowingly cooperates to further the unlawful  
 32 object of the conspiracy, with knowledge that others have combined

KIRSCHNER & GREENBERG  
 FOURTH FLOOR AVCO CENTER  
 10880 WILSHIRE BOULEVARD  
 LOS ANGELES, CALIFORNIA 90024  
 (213) 474-8888 • 879-5500

JA1575

COURT'S INSTRUCTION NO. 1

DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO. 1

The Government is required to prove the following elements beyond a reasonable doubt in order to establish the crime of conspiracy:

FIRST: The existence of a conspiracy as charged in the indictment;

SECOND: That each defendant knowingly and with willful intent associated himself with the conspiracy; and

THIRD: The commission by any co-conspirator of at least one of the overt acts set forth in the indictment.

The first element is satisfied if, from proof of all the relevant facts and circumstances, you find beyond a reasonable doubt that the minds of at least two alleged co-conspirators met in an understanding way so as to bring about an agreement to commit stock and mail fraud, and the sale of unregistered securities, as charged.

However, this is not to say that because two alleged co-conspirators met in an understanding way that all of the alleged co-conspirators joined the conspiracy. Whether or not each defendant joined this conspiracy is another matter which I shall come to in a moment. You may find that the conspiracy existed even if you find one or more of the persons charged were not members of that conspiracy. It is sufficient if any two or more of the persons named in the indictment have conspired.

You may only find those defendants guilty who joined the conspiracy with knowledge of its purpose, to wit, to violate securities laws and the mail fraud statute. You must acquit those defendants who the government has not proven beyond a reasonable doubt joined the conspiracy with knowledge of its unlawful purpose.

JA1576

1        17.05 - Verdict -- Unanimous -- Duty to Deliberate.  
2        17.06 - Judging the Evidence.  
3        17.07 - Jury's Recollection Controls.  
4        17.10 - Election of Foreman -- General Verdict --  
5                      Multiple Defendants.  
6        17.11 - Verdict -- Lesser Included Offense.  
7        17.12 - Election of Foreman -- General Verdict as to  
8                      Offense Charged -- General Verdict as to Lesser  
9                      Included Offense.  
10      17.13 - Form of General Verdict as to Lesser Included  
11                      Offense.  
12      17.14 - Verdict -- As to One of Multiple Defendants.  
13      17.16 - Verdict -- Jury's Responsibility.  
14      17.17 - Communications between Court and Jury During  
15                      Jury's Deliberations.

II

17 Defendant Zuber also requests the Court to include in  
18 its charge to the jury the attached special instructions.

III

Leave is respectfully requested to include such other  
and additional instructions as may become appropriate during the  
course of the trial.

Respectfully submitted,

KIRSCHNER & GREENBERG

By:   
RICHARD H. KIRSCHNER

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10880 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6888 • 879-5800

JA1577

- 1        11.34 - Weaker and Less Satisfactory Evidence.
- 2        12.03 - Testimony of Perjurer.
- 3        12.05 - Impeachment -- Inconsistent Statements or Conduct  
4                -- Falsus in Uno Falsus in Omnibus.
- 5        12.06 - Impeachment -- Conviction of Felony.
- 6        12.07 - Impeachment -- Bad Reputation for Truth and  
7                Veracity.
- 8        12.11 - Credibility of Accused as Witness.
- 9        13.01 - Act and Intent.
- 10      13.03 - Specific Intent.
- 11      13.04 - Ignorance of the Law.
- 12      16.03 - "False" -- Defined.
- 13      16.05 - "Fraudulent" -- Defined.
- 14      16.06 - "Intent to Defraud" -- Defined.
- 15      16.07 - "Knowingly" -- To Act.
- 16      16.08 - "Knowingly" -- To Omit.
- 17      16.09 - Knowledge as Essential Element of the Offense.
- 18      16.11 - "Unlawfully" -- To Act.
- 19      16.12 - "Unlawfully" -- To Omit.
- 20      16.13 - "Willfully" -- To Act.
- 21      16.14 - "Willfully" -- To Omit.
- 22      10.05 - Evidence Admissible for Particular Purpose Only.
- 23      10.06 - Evidence Admissible Against Particular Defendant  
24                Only.
- 25      10.08 - Court's Comments on Evidence.
- 26      10.09 - Court's Questions to Witnesses.
- 27      10.10 - Court's Comments to Counsel.
- 28      10.11 - Objections -- Ruling on Evidence.
- 29      10.12 - Consider Only Offense Charged.
- 30      10.13 - Consider Only Offense Charged -- Detail.
- 31      17.01 - Verdict as to Accused Only.
- 32      17.03 - Verdict -- Multiple Counts, Multiple Defendants.

1 to violate the law he becomes a member although his role may only  
2 be a subordinate one.

3       The government has alleged in the indictment that the  
4 object of the conspiracy was to "secure control of many thousands  
5 of shares of stock, never registered with the SEC, in an inactive  
6 'shell corporation', namely Pioneer, then to establish an artificial  
7 market in the stock through manipulative devices, including  
8 quotes at arbitrarily selected prices, touting, giving assurances  
9 against loss, and directing trades, and then finally to sell,  
10 pledge and distribute this unregistered stock at artificially  
11 high prices . . . ". In order to find that a particular defendant  
12 was a member of this conspiracy you must first find, beyond a  
13 reasonable doubt that he had knowledge of the aforesaid object of  
14 the conspiracy and that he knowingly cooperated with others to  
15 further that object, and that he knew that object to be unlawful.  
16 In addition to the foregoing, you must acquit, unless you find  
17 beyond a reasonable doubt that at least one of the twelve overt  
18 acts in the indictment was knowingly committed by one of the co-  
19 conspirators.

20  
21       United States v. Bentvena, 319 F.2d 916 (2d. Cir. 1963)

22       United States v. Agueci, 310 F.2d 817 (2d Cir. 1962)

23       United States v. Aviles, 274 F.2d 188

24  
25  
26  
27  
28  
29  
30  
31  
32  
  
3  
KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10800 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6855 • 879-8500

[COURT NOTATION]  
"DENIED"

JA1579

COURT'S INSTRUCTION NO. \_\_\_\_\_

DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO. 2

Mere similarity of conduct among various persons, and  
the fact that they may have been associated with each other and  
may have been together and discussed common interests is not  
sufficient to establish that the defendants conspired with one  
another; nor is mere knowledge, acquiescence or approval of a  
violation of the Federal Securities Law or the Federal Mail Fraud  
Statute make one a party to a conspiracy.

Adapted from Devitt and Blackmar § 11.10 "Mere  
Presence" Not Sufficient

Nipp v. United States, 422 F.2d 509, 514 (10th Cir.  
1969), cert. den. 397 U.S. 100  
United States v. Mendez, 496 F.2d 128, 130 (5th Cir. 1974)  
Roberts v. United States, 416 F.2d 1216 (5th Cir.  
1969)

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10880 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 879-5800

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 879-5800

JA1580

COURT NOTATION  
"DENIED"

COURT'S INSTRUCTION NO.

DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO. 3

Defendant, Edward Zuber, has been charged as aider and abettor in counts \_\_\_\_\_. What does it mean to aid and abet? It means to knowingly participate in the commission of a crime. That is, purposefully to give substantial assistance to one or more others to help in the commission of a crime. In order to convict anyone of aiding and abetting, the government must prove beyond a reasonable doubt each of the following:

FIRST: That the person or persons being aided, that is, the other person or persons, must be intentionally committing a crime;

SECOND: The aider or abettor must know that the other person or persons are committing a crime;

THIRD: The aider or abettor must have the purpose to aid that other person or persons to commit the crime; and

FOURTH: The aider must in fact render aid or assistance in the commission of the crime.

United States v. Interstate Engineering Corporation

288 F.Supp. 402, 428 (D.C.N.H. 1968), affirmed

New England Enterprises, Inc. v. United States, 400

F.2d 58 (1st Cir. 1968), cert. den. 393 U.S. 1036,

DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO. 4

The defendants are charged in Counts 17 - 29 with securities fraud. There are three essential elements of the crime of securities fraud. The prosecution must prove each element beyond a reasonable doubt before you may find the defendant guilty of this crime. Those three elements, which I will discuss in some detail later, are:

First, that the defendant actively participated in a scheme to defraud investors in Pioneer Development Co. by means of false statements of material facts or by means of statements which were misleading because of the failure to state additional material facts.

Second, that the defendant used or caused to be used the mails or other means of interstate communication in furtherance of such an alleged scheme.

Third, that the defendant knew that such statements were made, knew they were false or misleading at the time they were made, or knew they were made with a reckless indifference as to whether they were true or false, and knowingly and intentionally sought by some affirmative action of his own to defraud and cheat the alleged victims.

Remember that the guilt or innocence of each defendant is to be judged separately with respect to each accusation in the indictment and separately and apart from the guilt or innocence of any other defendant. If the prosecution fails to convince you beyond any reasonable doubt, of the existence of any one of the three elements in this crime with respect to a defendant, then, you must acquit that defendant.

*Defendant  
not guilty  
but guilty  
in substance*

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6355 • 879-5800

JA1582

COURT'S INSTRUCTION NO.

DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO.

**COURT NOTATION**  
"DENIED IN THIS FORM  
BUT GRANTED IN  
SUBSTANCE

5

The first point of contention upon which you must focus your thoughts in determining whether any of these defendants is guilty of criminal fraud in the sale of Pioneer Securities is the nature of the particular statements or omissions the prosecution claims were false or misleading.

In regard to these statements or omissions, first, ask yourself whether they were statements or omissions of fact. Any person selling stock, is entitled to give his opinion of the product he is trying to sell. And it is only natural that he will be enthusiastic in his efforts to make a sale. For instance, he is perfectly entitled to give his honest opinion or make a prediction as to the future prospects of the Pioneer Development Corp., so long as it was his opinion at the time, and so long as there was some foundation for it then. An honest man may hold opinions which are erroneous or even visionary. Nobody can foresee the future, and you may not convict a man of fraud merely because the company about which he was once legitimately hopeful eventually proved to be a failure. If you find that a statement was merely an opinion regarding Pioneer or a prediction of its prospects for the future, and that there was some honest reason for it at the time it was made, and that the defendant concerned honestly, although perhaps mistakenly, held the opinion or prediction he gave, then you should find such a defendant innocent of the charge of criminal fraud in that instance.

But, even if you determine that the statement or omission about which the prosecution complains did concern a fact rather than a bona fide opinion or prediction, you must then determine whether the statement was true or false when it was made, or whether the omission was misleading when made. You know that there

1 are degrees of misrepresentation and that the same statement is  
2 sometimes capable of several interpretations, according to the  
3 circumstances under which it was made. It is also true that some  
4 statements which are literally true may still be misleading because  
5 of facts which were omitted. It is for you, the jury, to decide  
6 whether the statements or omissions allegedly made were false or  
7 misleading at the time, and under the particular circumstances,  
8 in which they were made. If you find that you have a reasonable  
9 doubt whether the statement or omission was false or misleading  
10 at the time it was made, then you should find the particular  
11 defendant innocent of the charge of criminal fraud in that instance.

12           If you determine that the particular statement is a  
13 statement of fact instead of an honest, permissible opinion or  
14 prediction, and you further determine that the statement was false  
15 or misleading at the time it was made, you are then faced with  
16 another important problem concerning the nature of the statement.  
17 That problem is whether the fact misstated or omitted was a  
18 "material" fact under the circumstances. The law does not require  
19 a person selling stock to state every fact about the stock which  
20 a prospective purchaser might like to know and that might, if  
21 known, tend to influence his decision. In regard to omissions,  
22 the law requires only that omissions not be made of facts which are  
23 essential in order to make the statement made not misleading.  
24 For instance, even if you find that a particular statement of fact  
25 is plainly untruthful, you must also find that the fact misstated  
26 was so important that it could reasonably be expected to induce  
27 a person to act or not to act, and in this case to purchase or not  
28 to purchase Pioneer securities, before you may even consider whether  
29 the statement was fraudulent.

30           The law is concerned only with omissions of facts which  
31 are essential to make the statement made not misleading and with  
32 misstatements of facts which are important enough to induce a

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6885 • 879-5800

[COURT NOTATION]

"DENIED IN THIS FORM

"GRANTED IN

6

SUBSTANCE"

JA1584

COURT'S INSTRUCTION NO.

DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO.

1  
2

If you conclude, beyond a reasonable doubt, (1) that  
the statements in question were statements of fact rather than  
bona fide opinions or predictions, (2) that they were either false  
or misleading, and (3) that the facts shown to be misstated or  
omitted were material to an investment decision, then you must  
consider whether the defendant either used, or caused others to  
use, the mails or other instruments of interstate communication  
or transportation in furtherance of the alleged scheme to defraud.

It is an essential part of the prosecution's case to  
prove to you, beyond a reasonable doubt, that the defendant in  
question either personally used the mails or other instruments  
of interstate communication or transportation, such as the telephone,  
or that he was an active, knowing and wilful participant in a  
scheme to defraud and, as such, had reason to know that others  
would make use of such interstate facilities in furtherance of  
such a scheme to defraud.

It is not necessary that the matter which was mailed or  
the telephone conversation which occurred contain anything which  
was fraudulent in itself, so long as it is established beyond a  
reasonable doubt that such mailings or telephone conversations  
contributed in some way to either an individual or group effort  
to defraud others in the offer and sale of securities.

26

27 41 F.R.D. 93, 115-116

28 Schaefer v. United States, 299 F.2d 625 (7th Cir.1962)

29 cert. den., 370 U.S. 917, 82 S.Ct. 1553, 8 L.Ed.2d 497

30 (1962);

31 Burns v. United States, 286 F.2d 152 (10th Cir.1961)

32

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
• 10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6665 • 879-5800

JA1585

1 person to invest or not to invest. And it is only the omission or  
2 misstatement of such important facts upon which you may judge  
3 whether the defendant responsible should be convicted of criminal  
4 fraud.

5  
6       3 Loss, Securities Regulation 1430-44 (2d ed. 1961);

7       Walters v. United States, 256 F.2d 840, 843 (9th Cir.

8       1958), cert. den., 358 U.S. 833, 79 S.Ct. 54, 3 L.Ed.2d  
9       70 (1958);

10      United States v. Robertson, 298 F.2d 739 (2d Cir. 1962);

11      S.E.C. v. Texas Gulf Sulpher, 401 F.2d 833 (2d Cir. 1968);

12      41 F.R.D. 93, 113-115

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WINFIELD BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 875-5600

[COURT NOTATION]

"DENIED"

JA1586

COURT'S INSTRUCTION NO.

DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO. 7

Even if you can determine, beyond any reasonable doubt,  
that there were false statements of material facts or omissions  
of material facts which rendered statements misleading, and even  
if you are convinced that interstate facilities were used in the  
way described, you must declare any defendant innocent of the  
charge of criminal fraud unless you can resolve three other  
questions against him. And those questions are the most crucial  
and most difficult ones, because they involve a conclusion with  
regard to the individual defendant's intentions and his state of  
mind.

The first issue is to determine which defendant, if any,  
is responsible for the statement in question. If a defendant did  
not actually make the misrepresentation himself, he cannot be  
held responsible for it unless it is proved that he directed the  
other person to make the misrepresentation or that he in some  
other way actively helped the other defendant make the misrepresenta-  
tion and specifically shared his criminal purpose. Such evil  
participation in the commission of a crime with another is called  
aiding and abetting, the requirements of which I will describe  
for you later. It is enough for you to remember now that unless  
the prosecution is able to convince you beyond a reasonable doubt  
that a defendant helped another person to make a misrepresentation  
in such a way, to such an extent, and with such a shared criminal  
purpose as to be guilty of aiding and abetting, you may not hold  
a defendant responsible for a misrepresentation which he did not  
make himself.

Assuming that you do conclude that a defendant did make,  
and was responsible for, a misrepresentation of a fact material  
to the investment decision, then you are faced with the second

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 VENICE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 879-5800

1 problem involved in evaluating the guilt or innocence of a person  
2 charged with criminal fraud. That is whether the defendant had  
3 actual, personal knowledge that the statement was false or mislead-  
4 ing when made, or had actual personal knowledge that the statement  
5 was made with a reckless indifference to so falsity. Criminal  
6 fraud is never committed when reasonable and honestly held beliefs  
7 which are communicated to others turn out to be unwise, mistaken,  
8 or erroneous. If the defendant sincerely and reasonably believed  
9 what he was saying at the time he said it, you may not convict  
10 him of criminal fraud, no matter how false or misleading the  
11 prosecution shows his statements to have been in retrospect.

12 In deciding whether a defendant responsible for misrepre-  
13 sentations knew that they were false or misleading at the time  
14 they were made, you must rely on evidence of the facts surround-  
15 ing the particular transaction concerned, since you cannot look  
16 directly into his mind. It is appropriate for you to consider  
17 the extent of his knowledge of the conditions of the company,  
18 particularly those conditions which may change from day to day.  
19 For this purpose you should look beyond the title which he may  
20 have had as an officer of the company and try to determine  
21 what he actually knew about the relevant operations of Pioneer.  
22 You should ask yourself whether it would be likely that he would  
23 have personal knowledge of the fact he related or whether it was  
24 more likely that he obtained his information second-hand in  
25 reliance on the statements and opinions of others who were closer  
26 to the pertinent affairs of the company. For example, even if you  
27 find that a statement was made to the effect Pioneer owned a  
28 valuable mercury mine and later it was shown the mine was not  
29 valuable, if you find that the defendant reasonably relied in  
30 good faith on the expertise of the assayer and codefendant who  
31 furnished the statement and that he therefore personally believed the  
32 statement to be truthful, you must acquit the defendant charged

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 879-5800

1 with fraud in that instance.

2 For the purpose of the charge of criminal fraud, it is  
3 not enough if the defendant was merely mistaken. A false or mis-  
4 leading statement of fact may easily be the result of an honest  
5 mistake. Perhaps the defendant did not know the true facts;  
6 perhaps he relied on false or misleading information given to him  
7 by others; or perhaps he was over-enthusiastic, or unrealistic in  
8 stating his own hopes for the company. If, after all the testi-  
9 mony, you find that you have a reasonable doubt that a particular  
10 defendant had actual knowledge that the misrepresentations  
11 for which he was responsible were false or misleading, or that he  
12 made them with a reckless disregard for their falsity, and you feel  
13 that instead he was simply mistaken, you must find him innocent  
14 of the charge of criminal fraud in that instance.

15 You may be faced with a third problem to resolve in  
16 determining the guilt or innocence of an individual defendant on  
17 the charge of criminal fraud. For even if you are able to conclude  
18 beyond a reasonable doubt, that a defendant who is responsible for  
19 certain misrepresentations of material fact had personal knowledge  
20 that what he was saying was false or misleading, or that the  
21 statement was made with a reckless disregard for its falsity, you  
22 still may not convict him of criminal fraud unless you are able  
23 to conclude that he had the specific intention to deceive and  
24 defraud the person to whom the statements were made. You may  
25 recall that it is only the wilful violation of the anti-fraud  
26 statute I read to you earlier which is made a crime. And it is  
27 the element of evil purpose, criminal intent, or wilfulness which  
28 distinguishes the criminal fraud charged here from less serious  
29 types of misrepresentation for which the law provides less harsh  
30 remedies for those who are wronged.

31 In determining whether a particular defendant acted with  
32 evil purpose and wilfully sought to defraud other people when

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10880 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6888 • 679-5800

JA1589

1 he misrepresented a material fact, you must consider a defendant's  
2 state of mind. You should consider, for instance, whether the  
3 defendant personally knew the true facts concerning the particular  
4 transaction or fact which the prosecution claims he had misrepresent-  
5 ed, or whether he had instead relied in good faith on others for  
6 the information, as we discussed earlier.

7

8 41 F.R.D. 93, 116-118

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

ROSENSTEIN & GREENBERG  
FOURTH FLOOR AVOC CENTER  
10880 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6888 • 879-5500

[COURT IN SESSION]

"GRANTED IN PART"

JA1590

COURT'S INSTRUCTION NO.

DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO.

8

Section 1341 of Title 18 of U.S.C.A. provides in part

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises . . . for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department . . .",

shall be guilty of an offense against the laws of the United States.

This statute was enacted under the power of the Congress to establish and operate and regulate the Post Office Establishment of the United States.

Devitt and Blackmar, § 40.03 Statute Defining Offense

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 879-5500

[COURT NOTATION]

"DENIED IN THIS  
FORM BUT GRANTED  
IN SUBSTANCE"

JA1591

COURT'S INSTRUCTION NO.

DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO. 9

Three essential elements are required to be proved  
in order to establish the offense charged in the indictment:

FIRST: The act or acts of having devised, or  
having intended to devise, a scheme or  
artifice to defraud purchasers of the  
stock of Pioneer Development Corpora-  
tion, and to obtain money and property  
from said persons by means of false  
and fraudulent pretenses, representa-  
tions and promises, as charged;

SECOND: The act or acts of placing, or causing  
to be placed, in an authorized depository for  
mail matter a letter intended to be sent or  
delivered by the Post Office Department,  
as charged; and

THIRD: The act or acts of so using the United  
States mails willfully, and with the  
specific intent to carry out some essential  
step in the execution of said scheme or  
artifice to defraud, or to attempt to  
do so, as charged.

As stated before, the burden is always upon the prosecu-  
tion to prove beyond a reasonable doubt every essential element  
of the crime charged; the law never imposes upon a defendant in a  
criminal case the burden or duty of calling any witnesses or  
producing any evidence.

Devitt and Blackmar, § 40.05 Essential Elements of  
Offense [modified]

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 879-8800

*Murphy*  
1 JA1592

COURT'S INSTRUCTION NO.

[COURT NOTATION]

"GRANTED IN  
SUBSTANCE"

DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO. 10

2  
3  
4 The words "scheme" and "artifice", as used in the  
5 statute just read, include any plan or course of action intended  
6 to deceive others, and to obtain, by false or fraudulent  
7 pretenses, representations, or promises, money or property from  
8 persons so deceived.

9 A statement or representation is "false or fraudulent"  
10 within the meaning of this statute, if known to be untrue, or  
11 made with reckless indifference as to its truth or falsity,  
12 and made or caused to be made with the intent to deceive.

13 A "false or fraudulent representation" may be made  
14 by statements of half truths or the concealment of material facts,  
15 as well as by affirmative statements or acts.

16  
17 Devitt and Blackmar, § 40.04 "Scheme", "Artifice",  
18 "False", "Fraudulent" -- Defined

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10389 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6888 • 879-5800

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

1 COURT'S INSTRUCTION NO.

2 DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO. 11

3

4 Defendant has offered evidence of his good faith in

5 making the representations alleged in the indictment. Good faith

6 is a complete defense to the crime of mail fraud. In determining

7 whether defendant acted in good faith or with the intent to

8 defraud, the jury should consider all the facts and circumstances

9 in the case. Therefore, unless the jury is convinced beyond a

10 reasonable doubt that defendant did not act in good faith he

11 should be found not guilty.

12

13 § 16.03 Good Faith as a Defense, 36 F.R.D. 457,

14 605, Manual on Jury Instructions -- Criminal

15 [modified]

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10880 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 879-5800

DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO. 12

If the jury should find that, at the time of the mailing, as charged, the representations and promises were then thought to be true and correct by those who made them, the fact that those representations and promises may thereafter turn out to be untrue would not warrant a verdict of guilty. The law was not violated, if the representations and pretenses were thought to be true at the time of the mailing.

Devitt and Blackmar, § 40.07 Falsity Must Exist at Time of Mailing [modified]

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10880 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 879-5800

COURT NOTATION

JA1595

"DENIED"

COURT'S INSTRUCTION NO. \_\_\_\_\_

DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO. 14

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

The law presumes a defendant to be innocent of crime.

Thus, a defendant, although accused, begins the trial with a "clean slate" -- with no evidence against him. This presumption of innocence remains with each defendant and can be overcome only if the government presents legal evidence sufficient to establish the defendant's guilt beyond a reasonable doubt. Therefore, the presumption of innocence alone is sufficient to acquit the defendant, unless the jury is satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

The test the government is required to meet is one of reasonable doubt. A reasonable doubt is one that would make a reasonable prudent person hesitate to act. Proof beyond a reasonable doubt, therefore, must be so convincing that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

A defendant may never be convicted upon mere suspicion, conjecture or speculation.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant. For the law never requires a defendant in a criminal case to call any witnesses, produce any evidence, or prove any facts. Rather, the law imposes upon the government the burden of proving the defendant's guilt by legal evidence beyond a reasonable doubt.

A reasonable doubt exists whenever, after careful and impartial consideration of all the evidence in the case, the jury does not feel convinced to a moral certainty that a defendant is guilty of the charge. So, after carefully and impartially examining all the evidence in the case, if the jury views the

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10880 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6888 • 879-5500

*Holland*  
*emo*

JA1596

1 evidence as reasonably permitting either of two constructions or  
2 interpretations, one of which points to the guilt of the defendant  
3 and the other to his innocence, it is your duty under the law, to  
4 adopt that interpretation which points to the defendant's  
5 innocence, and reject that interpretation which points to his  
6 guilt.

7

8 Devitt and Blackmar § 11.01 Presumption of  
9 Innocence -- Burden of Proof -- Reasonable  
10 Doubt [modified]

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 879-5500

## 1 COURT'S INSTRUCTION NO.

2 DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO.

3 15

4 Evidence relating to any statement, or act or omission,  
5 claimed to have been made or done by a defendant outside of court,  
6 and after a crime has been committed, should always be considered  
7 with caution and weighed with great care; and all such evidence  
8 should be disregarded entirely, unless the evidence in the case  
9 convinces the jury beyond a reasonable doubt that the statement  
10 or act or omission was knowingly made or done.

11 A statement or act or omission is "knowingly" made  
12 or done, if done voluntarily and intentionally, and not because  
13 of mistake or accident or other innocent reason.

14 In determining whether any statement or act or omission  
15 claimed to have been made by a defendant outside of court, and  
16 after a crime has been committed, was knowingly made or done, the  
17 jury should consider the age, sex, training, education, occupation,  
18 and physical and mental condition of the defendant, and his treat-  
19 ment while in custody or under interrogation, as shown by the  
20 evidence in the case; and also all other circumstances in evidence  
21 surrounding the making of the statement or act or omission,  
22 including whether, before the statement or act or omission was  
23 made or done, the defendant knew or had been told and understood  
24 that he was not obligated or required to make or do the statement  
25 or act or omission claimed to have been made or done by him; that  
26 any statement or act or omission which he might make or do could  
27 be used against him in court; that he was entitled to the assist-  
28 ance of counsel before making any statement, either oral or in  
29 writing, or before doing any act or omission; and that if he was  
30 without money or means to retain counsel of his own choice, an  
31 attorney would be appointed to advise and represent him free of  
32 cost or obligation.

JA1598

1           If the evidence in the case does not convince beyond  
2 a reasonable doubt that a statement was made voluntarily and  
3 intentionally you should disregard it entirely. On the other hand,  
4 if the evidence in the case does show beyond a reasonable doubt  
5 that a statement was in fact voluntarily and intentionally made  
6 by a defendant, you may consider it as evidence in the case  
7 against the defendant who voluntarily and intentionally made the  
8 statement.

9  
10           Devitt and Blackmar § 11.16 Extra Judicial State-  
11           ments or Conduct -- Generally [modified]

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10880 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 678-5800

[COURT NOTATION]

"DENIED IN THIS  
FORM"

JA1599

COURT'S INSTRUCTION NO.

DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO.

16

You will recall that several witnesses who testified in this case against the defendants have made certain agreements with the government. Some, such as \_\_\_\_\_ have been promised by the government that they will not be prosecuted for their own actions in connection with their agreement to testify against the defendants here. Some, such as \_\_\_\_\_ have been promised that their cooperation with the government, that is, the testimony they have given against these defendants will be made known to the Court prior to their being sentenced for crimes of which they have been convicted. Because such inducements have been made to these witnesses, you must examine the testimony of each with great care, because the testimony of any or all of them may be affected by the person's own personal interest.

Adapted from Devitt and Blackmar, Volume 1,

§ 12.02

Hoffa v. United States, 385 U.S. 293 (1966)

United States v. Gonzalez-Carta, 419 F.2d 548, 551, (2d Cir. 1969);

Lemons v. United States, 339 F.2d 761 (9th Cir. 1964)

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10880 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(313) 474-6555

COURT NOTIFICATION  
"DENIED IN THIS  
FORM"

JA1600

COURT'S INSTRUCTION NO.

DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO. 17

1  
2  
3  
4 The testimony of an informer, or a codefendant, or an  
5 alleged coconspirator who provides evidence for personal advantage,  
6 in his own treatment by the prosecution, the Probation Officer, or  
7 the Court must be received with caution and weighed by the jury  
8 with great care. The jury should carefully examine whether such  
9 evidence has been affected by that witness's own interests, or  
10 by prejudice against the defendant.

11  
12 Devitt and Blackmar § 12.02 Testimony of Informer  
13 -- Interested Witness [modified]

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-9555 • 879-5800

COURT NOTATION  
"DEVIEN"

JA1601

COURT'S INSTRUCTION NO.

DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO. 18

2  
*Devitt*  
3  
4 You are here to determine the guilt or innocence of  
5 those defendants here on trial based upon the evidence in the case.  
6 You are not called upon to determine the guilt or innocence of  
7 any other person or persons. Even though you may believe one  
8 or more other persons are also guilty, you may not find any of the  
9 defendants on trial guilty unless the evidence in the case so  
10 convinces you beyond a reasonable doubt. Unless you are so  
11 convinced it is your duty under the law to find that defendant  
12 or defendants not guilty.

13  
14 Devitt and Blackmar §17.01 Verdict as to  
15 Accused Only [modified]

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6555 • 879-5500

COURT'S INSTRUCTION

"DENIED"

JA1602

COURT'S INSTRUCTION NO.

DEFENDANT ZUBER'S PROPOSED INSTRUCTION NO. 19

*Denied*

Each defendant is entitled to have his guilt or innocence as to each of the crimes charged determined from his own conduct and from the evidence which applies to him, as if he were being tried alone. The guilt or innocence of any one defendant of any of the crimes charged should not influence the jury's verdict respecting any of the other defendants. Rather, it is your duty to give separate, personal consideration to the case of each individual defendant. In doing so, you should analyze what the evidence in the case shows with respect to that individual, disregarding entirely any evidence admitted solely against some other defendant or defendants. In summation, you must determine the guilt of each defendant as to each separate count by giving separate consideration to the evidence which applies to him as to each separate count.

Devitt and Blackmar § 17.04 Consider Each

Defendant [modified]

Brandom v. United States, 431 F.2d 1391, 1399

(7th Cir 1970), cert. den. 401 U.S. 942.

KIRSCHNER & GREENBERG  
FOURTH FLOOR AVCO CENTER  
10850 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90024  
(213) 474-6885 • 879-8800

JA1603

REQUESTS TO CHARGE IN BEHALF OF DEFENDANT SEGAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
United States of America :  
: 74 Cr. 908  
-v- : (LFM)  
BURNET ACTON, et al., :  
: Defendants.  
: -----x

The defendant Alan Segal respectfully requests  
the Court to include the following in its charge to the  
jury:

JA1604

TABLE OF CONTENTS

Request No.

1	SALE OF UNREGISTERED STOCK- THE STATUTE DEFINING THE OFFENSE
2	SALE OF UNREGISTERED STOCK-EXEMP- TION FOR PERSONS OTHER THAN ISSUERS, UNDERWRITERS & DEALERS - THE STATUTE
3	SALE OF UNREGISTERED STOCK-APPLICA- BILITY OF EXEMPTION FOR PERSONS OTHER THAN ISSUERS, UNDERWRITERS, AND DEALERS - CONTENTIONS OF THE PARTIES
4	DEFINITION OF UNDERWRITER, ISSUER AND DEALER
5	SALE OR UNREGISTERED STOCK-EXEMPTIONS - SECURITIES SOLD PRIOR TO 1933 - STATUTE
6	APPLICABILITY OF THE PRE-1933 EXEMPTION- CONTENTIONS OF THE PARTIES
7	SALE OF UNREGISTERED STOCK-WILFULNESS- STATUTE
8	SALE OF UNREGISTERED STOCK-WILFULNESS REQUIRES PROOF OF KNOWLEDGE OF THE LAW AND OF ITS APPLICABILITY TO THE DEFENDANTS' CONDUCT
9	SALE OF UNREGISTERED STOCK-WILFULNESS REQUIRES PROOF OF KNOWLEDGE OF PAR- TICIPATING IN AN UNDERWRITING WITH A CONTROL GROUP
10	FRAUDULENT SALE OF SECURITIES - MATERIAL ELEMENTS OF THE STATUTE
11	FRAUDULENT SALE OF SECURITIES - CONTENTIONS OF THE PARTIES-MISREPRE- SENTATIONS
12	FRAUDULENT SALE OF SECURITIES - CONTENTIONS OF THE PARTIES - OMISSIONS

**JA1605**

Request No.

13	FRAUDULENT SALE OF SECURITIES - CONTENTIONS OF THE PARTIES - MANIPULATION
14	SUPPLY AND DEMAND
15	RECOMMENDATIONS
16	PURCHASE AND SALE OF SECURITIES
17	GOOD FAITH
18	SINGLE OR MULTIPLE CONSPIRACIES
19	CONSPIRACY - SEPARATE CONSIDERATION
20	GUILT BY ASSOCIATION
21	SUBSTANTIVE COUNTS
22	THE CIVIL INJUNCTION

[COURT NOTATION] "DENIED  
IN THIS COURT"

JA1606

Request No. 1

SALE OF UNREGISTERED STOCK -  
THE STATUTE DEFINING THE OFFENSE

Count one includes a charge that the defendants conspired to use the mails and instruments of interstate commerce to sell unregistered Pioneer stock, in violation of Title 15, United States Code, Sections 77e(a) and 77x.

Counts Two, Three and Five through Ten charge that defendant Segal, among others, actually transported unregistered Pioneer stock in the mails and interstate commerce for the purpose of sale.

The statutes relating to these charges are as follows:

Title 15, United States Code,  
Section 77e(a):

"(a) Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly -

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transporation, any such security for the purpose of sale or for delivery after sale.

\* \* \*

**JA1607**

This statute is more generally known as  
Section 5 of the Securities Act of 1933, and I will refer  
to it as "Section 5" during the remainder of my charge.  
I will also refer to the Securities Act of 1933 simply as  
the "Securities Act."

[COURT NOTATION]

JA1608

Request No. 2

"DENIED IN FORM  
GRANT IN SUBSTANCE"

SALE OF UNREGISTERED STOCK  
EXEMPTION FOR PERSONS  
OTHER THAN ISSUERS,  
UNDERWRITERS & DEALERS  
THE STATUTE

Section 4 of the Securities Act provides as follows:

"EXEMPTED TRANSACTIONS

The provisions of section 5 shall not apply to -

(1) transactions by any person other than an issuer, underwriter, or dealer."

It should be noted that there is no dispute here that the Pioneer shares were not registered pursuant to the Securities Act.

JA1609

*"DENIED"*

Request No. 3

SALE OF UNREGISTERED STOCK  
APPLICABILITY OF EXEMPTION FOR  
PERSONS OTHER THAN ISSUERS, UNDERWRITERS  
AND DEALERS - CONTENTIONS OF THE PARTIES

The Government's contention is that the Section 4 exemption does not apply here because the defendant Segal was an underwriter.

The defendant Segal contends that the Government has failed to prove beyond a reasonable doubt that Mr. Segal was an underwriter. Specifically, the defendant Segal points to the fact that the shares transferred to his name and the name of Francine Zahl do not contain any evidence on their face that they came from a control group or a control person. Nor, Mr. Segal contends, did he make payment for his shares to a control person or group. Further, the defendant Segal contends that the testimony of the witnesses Clegg and Acton is unworthy of belief. If you accept these contentions, then you must have a reasonable doubt on the applicability of the exemption and you must acquit the defendant Segal on Counts One, Two and Three.

JA1610

"DEFIN." *(Handwritten)*

Request No. 4

DEFINITION OF  
UNDERWRITER, ISSUER AND DEALER

The statutes defining "issuer," "underwriter" and "dealer" are as follows:

Title 15, United States Code,  
Section 77b:

"(4) The term "issuer" means every person who issues or proposes to issue any security;  
\*\*\*"

Title 15, United States Code,  
Section 77b(iii)

"The term 'underwriter' means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; \* \* \* As used in this paragraph the term 'issuer' shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer."

Such persons are commonly referred to as "control persons" or as constituting a "control group."

Title 15, United States Code,  
Section 77b(12):

"The term 'dealer' means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person."

[COURT NOTATION]

"DENIED IN FORM

NOT GRANTED IN  
SUBSTANCE"

JA1611

Request No. 5

SALE OF UNREGISTERED STOCK  
EXEMPTIONS - SECURITIES  
SOLD PRIOR TO 1933 - STATUTE

The provisions of the Securities Act do not apply to:

"Any security which, prior to or within sixty days after May 27, 1933, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to such sixty days;

\* \* \*

Title 15, United States Code,  
Section 77c

This statute will be referred to in my charge as the "pre-1933" or "grandfather" exception.

[COURT NOTATION]  
"OPENED IN COURT  
NOT ANSWERED IN  
RESISTANCE"

JA1612

Request No. 6

APPLICABILITY OF THE  
PRE-1933 EXEMPTION  
CONTENTIONS OF THE PARTIES

There is no dispute that the securities offered for sale in this case were sold to the public prior to 1933. The Government contends that they were not exempt from registration, however, because they were part of a ". . .new offering. . .by an issuer or underwriter subsequent to. . ." 1933.

Title 15, United States Code,  
Section 77b:

(4) The term 'issuer' means every person who issues or proposes to issue any security;

\* \* \*

The defendant Segal contends that the Government has failed to prove the inapplicability of this exemption beyond a reasonable doubt, relying on the same factors as those relied on in connection with the "issuer-underwriter" exemption: the sources of the shares transferred to him and the recipients of the payments he made were not shown to be control persons.

[COURT NOTATION]

"GRANTED IN  
SUBSTANCE BUT  
DENIED IN  
TERMS"

JA1613

Request No. 7

SALE OF UNREGISTERED  
STOCK-WILFULNESS-STATUTE

Title 15, United States Code, Section 77x,  
which is part of the Securities Act, provides:

"Any person who willfully violates any of  
the provisions of this title.

\* \* \*

shall be guilty of an offense.

[COURT NOTATION]

"GRANTED IN  
SUBSTANCE"

JA1614

Request No. 8

SALE OF UNREGISTERED STOCK  
WILFULNESS REQUIRES PROOF OF  
KNOWLEDGE OF THE LAW  
AND OF ITS APPLICABILITY  
TO THE DEFENDANTS' CONDUCT

In order to find that the defendant Segal conspired to violate Section 5 as charged in Court One, or that he transported or caused Pioneer stock to be transported in interstate commerce in violation of Section 5 as charged in Counts Two, Three and Five through Ten, you must find beyond a reasonable doubt that the defendant Segal knew at the time of the alleged offenses that there was a duty under the law to register the stock with the SEC.

See United States v. Dardi, 330 F.2d 316,  
331 n.6 (2d Cir.) cert. denied, 379 U.S.  
845 (1964);

United States v. Murdock, 290 U.S. 389,  
394-95 (1933).

[COURT NOTATION]

"DENIED"

JA1615

Request No. 9

SALE OF UNREGISTERED STOCK-WILFULNESS  
REQUIRES PROOF OF KNOWLEDGE  
OF PARTICIPATING IN AN UNDERWRITING  
WITH A CONTROL GROUP

---

In order to find that the defendant Segal conspired to violate Section 5 as charged in Count One, or that he transported or caused Pioneer stock to be transported in interstate commerce in violation of Section 5 as charged in Counts Two and Three, you must also find beyond a reasonable doubt that the defendant Segal knew at the time of the alleged offenses that he was:

- (a) purchasing from a control person or group with a view to distribution; or
- (b) selling or offering to sell for a control person or group in connection with a distribution; or
- (c) participating or having a participation in the direct or indirect underwriting of any such undertaking.

The defendant Segal contends that the Government has failed to prove beyond a reasonable doubt that he had such knowledge. The defendant relies in this connection particularly upon the fact that Stuart Schiffman testified that Mr. Fraser, counsel for Pioneer, told the defendant Segal that the stock in Pioneer was free-trading because it

JA1616

had been issued prior to 1933. From this fact Segal contends that you should draw the inference that he was led to believe that no control stock was being distributed because Fraser would have been in a position to know such facts. If you draw such inference, you must find that the defendant Segal did not conspire to violate Section 5 as charged in Count One and did not commit the violations charged in Counts Two, Three and Five through Ten.

United States v. Dardi, supra, 330 F.2d at 325.

[COURT NOTATION]

JA1617

"DENIED IN FORM"

NOT GRANTED IN  
"IN STANCE"

Request No. 10

FRAUDULENT SALE OF SECURITIES -  
MATERIAL ELEMENTS OF THE STATUTE

The next statute is Section 17(a) of the Securities Act (Title 15, United States Code, Section 77q(a)). This statute provides that it shall be unlawful for any person in the offer or sale of any securities by use of any instrument of interstate commerce or of the mails, to

- (1) employ any device, scheme, or artifice to defraud, or
- (2) obtain money or property by means of any untrue statement or omission to state any material fact, necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, or
- (3) engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser.

Count One charges that the defendant Segal and others conspired to violate Section 17(a). Counts Seventeen through Twenty-Five charge that the defendant Segal and others actually used instruments of interstate commerce and of the mails in furtherance of violation of Section 17(a).

JA1618

DENIED

Request No. 11

FRAUDULENT SALE OF SECURITIES  
-CONTENTIONS OF THE PARTIES  
MISREPRESENTATIONS

The Government contends that the defendant Segal misrepresented certain facts about Pioneer in conversation with Robert Meyer, Donald Aymes, Ben Cohen and Stanley Schleger.

The defendant Segal contends that the Government has failed to prove beyond a reasonable doubt that (a) the statements were untrue, or (b) that the defendant Segal knew them to be untrue at the time he uttered them. In this connection, the defendant Segal points to the evidence introduced that Pioneer acquired a valuable mining claim and that Clegg and Acton believed that the mine was valuable, and expressed such belief to Mr. Segal at various times. Mr. Segal also relies on the testimony of the witness Buttram concerning the potential production of the mine. The question of whether the Government has sustained its burden of proof on those points is a question of fact that you alone must decide, based on the evidence introduced in the case by both sides.

[COURT NOTATION]

"DENICED"

JA1619

Request No. 12

FRAUDULENT SALE OF SECURITIES  
- CONTENTIONS OF THE PARTIES -  
OMISSIONS

The Government contends that the defendant Segal omitted mention of certain facts in various conversations he had about Pioneer, such as that the mine was not yet in operation, that Pioneer had not yet produced any revenues, and that he had sold shares of Pioneer.

The defendant Segal contends that in the context of the statements he did make, such omissions were not material or necessary to make the statements made, in the light of the circumstances under which they were made, not misleading. Thus the defendant Segal points to the fact that his conversations were with sophisticated businessmen who knew they were making a speculative investment; that his only representations were as to future profitability; and he contends that disclosure of his own prior sales of the security was not a necessary one since he was also purchasing Pioneer stock and prior sales by him at the market prices, if disclosed, would only have indicated that there was a strong market for the shares.

The questions of the materiality of such omissions, or of whether disclosure of the omitted facts would have been necessary to make his affirmative statements not misleading, are questions of fact that you alone must decide.

"DENIED"

[COURT NUMBER]

JA1620

Request No.13

FRAUDULENT SALE OF SECURITIES  
- CONTENTIONS OF THE PARTIES -  
MANIPULATION

The Government contends that certain market activities of the defendant Segal constituted a fraud on purchasers of Pioneer since they created or were intended to create an artificially inflated market price of the stock. In this connection, the Government points to testimony of Acton and Clegg that they promised Mr. Segal that they would not sell any Pioneer shares; and of Joseph Azzerone that Stuart Schiffman and Mr. Segal caused quotes to be entered in the pink sheets.

The defendant Segal contends that no credible evidence has been introduced of any agreement of Clegg and Acton not to sell; that they in fact did initiate sales immediately after the trading opened; that there were many shares remaining in the hands of old shareholders who could sell on the open market at any time; and that the quotations placed by Karen & Co. were simply invitations to other broker-dealers to trade and were of no market impact in the absence of an independent demand or supply of Pioneer stock. Thus, the defendant Segal contends that the proof shows that he was merely trading Pioneer stock and he had no intent or purpose to defraud or to conspire to defraud.

JA1621

"DENIED"  
[COURT NOTATION]

REQUEST NO. 14

SUPPLY AND DEMAND

Nor is there anything unlawful in utilizing the laws of supply and demand, which you are all familiar with. Knowing that there is a short supply of any particular commodity -- including stock -- and purchasing that commodity with knowledge and expectation that if the demand increases and the supply does, not the prices is likely to increase, is simply not a crime.

[COURT NOTATION]

"DENIED"

JA1622

REQUEST NO. 15

RECOMMENDATIONS

Nor is there anything unlawful in recommending to other people that they buy a particular stock, or in telling other people that one thinks the price of a stock will go up.

[COURT NOTATION]  
"DENIED"

JA1623

REQUEST NO. 16

PURCHASE AND SALE OF SECURITIES

You have heard testimony and exhibits have been read to you concerning purchases and sales of the stock of Pioneer Development Corp. Obviously there is nothing unlawful in the mere purchase and sale of stock.

Nor is there anything unlawful in the purchase of stocks by someone who expects the price of the stocks he buys to go up so that he will be able to sell at a profit. This is perfectly lawful activity and no inferences adverse to these defendants should be drawn merely from the fact that they may have purchased and sold stocks.

[COURT NOTIFICATION]

"DENIED"

JA1624

REQUEST NO. 17

GOOD FAITH

In connection with the discussion of reliance on counsel and the requisite criminal intent, it is important to instruct you as to a related defense contention - the defense of "good faith". The good faith" referred to concerns defendant Segal's good faith that the entire plan or scheme which has been devised is economically sound. It (good faith) does not refer to the defendant's good faith as to the existence of any particular fact or situation; instead, as I have said, it is good faith that the entire plan will be successful as a business.

*and that  
proposed  
game  
would be  
Rept*

This defense argued by defendant Segal could apply to all the counts in the indictment, including the stock fraud and mail fraud counts.

Sparrow v. U.S., 402 F.2d 826, 328 (10th Cir. 1968)

[COURT NOTATION]

JA1625

"DENIED  
EXCEPT  
LAST TR"

Request No. 18

SINGLE OR MULTIPLE CONSPIRACIES

In order to sustain a verdict of guilty as to Count One, the Government must introduce evidence that there was a single conspiracy as charged in that count.

In essence, Count One charges all defendants with a conspiracy to sell unregistered Pioneer stock at artificially inflated prices.

The defendant Segal contends that, if you believe the Government witnesses and accept the Government's theory of the facts, two conspiracies have in fact been proved. The first is a conspiracy among Segal, Clegg and Acton for Segal to trade Pioneer shares and for Clegg and Acton not to sell any. The second conspiracy is one among McKibben, Acton and Clegg to sell Pioneer shares in violation of the alleged promises to Segal.

If you find that there were in fact multiple conspiracies as above outlined, rather than the single conspiracy charged, then you must acquit the defendant Segal and all other defendants on Count One.

{ GRANTED

Kotteakos v. United States, 328 U.S. 750 (1946);  
and see, United States v. Calabro, 467 F.2d 973 (2d Cir. 1972), cert. denied 410 U.S. 926 (1973), and cases cited therein at p. 983.

[COURT NOTATION]

"GRANTED IN SUBSTANCE"

JA1626

REQUEST NO. 19

CONSPIRACY - SEPARATE CONSIDERATION

If you are satisfied beyond a reasonable doubt that the conspiracy as described in the indictment existed, you must then consider the evidence relating to each defendant named in the conspiracy count separately and decide whether that evidence proves beyond a reasonable doubt that he was a member of the conspiracy.

[COURT NOTATION]

"GRANTED IN  
SUBSTANCE"

JA1627

REQUEST NO. 20

GUILT BY ASSOCIATION

It must be remembered, ladies and gentlemen, that mere association with alleged conspirators, standing by itself, is an insufficient basis for finding that a defendant participated in a conspiracy.

You may not find a defendant guilty merely because he associated with others who happened to be committing the crime charged.

As I previously told you, the doctrine of guilt by association has no sanction at all in the law of this Court.

Mere proof of the commission of a crime charged against a co-conspirator, or mere knowledge by a defendant that a co-conspirator committed a criminal act in furtherance of the conspiracy is insufficient.

"DENIED"  
[COURT NOTATION]

JA1628

REQUEST NO. 21

SUBSTANTIVE COUNTS

As I have previously instructed you, there is a significant difference between the conspiracy charge and the substantive charges. And that difference is that in order to convict on the substantive counts, you must find, beyond a reasonable doubt, more than an agreement to violate the law. Unless you find that a defendant actually committed the crime of selling unregistered stock as I have explained it to you, you must acquit on counts 2 through 16. Unless you find that a defendant committed the crime stock fraud, you must acquit on counts 17 through 29. Unless you find that a defendant actually committed the crime of mail fraud, you must acquit on counts 30 through 46.

JA1629

"GRANTED"  
[COURT NOTATION]

Request No. 22

THE CIVIL INJUNCTION

The Government has introduced evidence of a civil injunction entered in a State Court in 1959 barring the defendant Segal from engaging in the business of buying and selling securities. This injunction was not a conviction of any crime whatsoever and is purely civil in nature. Mr. Segal is not charged in this case with having violated the injunction. The injunction was offered solely to establish that Mr. Segal may have used nominees because of the injunction. You are not to consider the injunction as evidence on any other issue in the case.

JA1630

Respectfully Submitted,

ANDERSON, RUSSELL, KILL & OLICK, P.C.  
Attorneys for Defendant  
Alan Segal  
630 Fifth Avenue  
New York, New York 10020

OF COUNSEL:

John H. Doyle, III  
James P. Heffernan

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA,  
Appellee,  
- against -  
HOWARD FINKELSTEIN, et al..  
Appellants.

Index No.

Affidavit of Personal Service

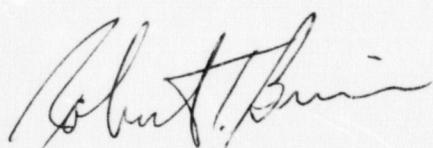
STATE OF NEW YORK, COUNTY OF New York ss.:

I, James Steele, being duly sworn,  
depose and say that deponent is not a party to the action, is over 18 years of age and resides at  
250 West 146th, Street, New York, New York  
That on the 3d day of July 1975 at 1 St. Andrews Place, N.Y. N.Y.

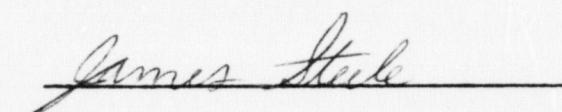
deponent served the annexed Joint Appendix upon  
Paul J. Curran

the Attorney in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s) herein,

Sworn to before me, this 3d  
day of July 19 75



ROBERT T. BRIN  
NOTARY PUBLIC, State of New York  
No. 31-0418950  
Qualified in New York County  
Commission Expires March 30, 1972

  
JAMES STEELE

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA,

Appellee,

- against -

HOWARD FINKELSTEIN, et al.,

Appellants,

Index No.

*Affidavit of Personal Service*

STATE OF NEW YORK, COUNTY OF New York

ss.:

I, James Steele, being duly sworn,  
depose and say that deponent is not a party to the action, is over 18 years of age and resides at  
250 West 146th, Street, New York, New York  
That on the 2d day of July 19 75 at 770 Lexington Ave, N.Y., N.Y.

deponent served the annexed Joint Appendix upon  
Irving L. Weinberger

the Attorney in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s) herein.

Sworn to before me, this 2d  
day of July 19 75

ROBERT T. BRIN  
NOTARY PUBLIC, State of New York  
No. 31-0418950  
Qualified in New York County  
Commission Expires March 30, 1977

  
\_\_\_\_\_  
JAMES STEELE

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

- against -

HOWARD FINKELSTEIN, et al.,

Appellants.

*Index No.*

*Affidavit of Personal Service*

STATE OF NEW YORK, COUNTY OF

New York

ss.:

I, James Steele, being duly sworn,  
depose and say that deponent is not a party to the action, is over 18 years of age and resides at  
250 West 146th, Street, New York, New York  
That on the 1st day of July 1975 at 36 E. 44th Street, N.Y., N.Y.

deponent served the annexed Appendix upon

Eleanor Jackson Piel

the Attorney in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s) herein.

Sworn to before me, this 1st  
day of July 19 75

ROBERT T. BRIN  
NOTARY PUBLIC, State of New York  
No. 31-0418950  
Qualified in New York County  
Commission Expires March 30, 1977

JAMES STEELE

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA,

Appellee,

- against -

HOWARD FINKELSTEIN, et al.,

Appellants.

Index No.

Affidavit of Service by Mail

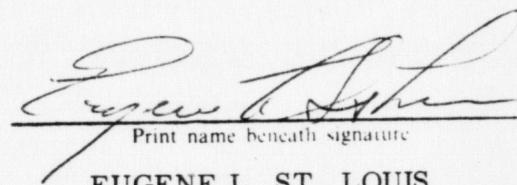
STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, Eugene L. St. Louis being duly sworn.  
 depose and say that deponent is not a party to the action, is over 18 years of age and resides at  
 1235 Plane Street, Union, N.J. 07083  
 That on the 2d day of July 19 75 deponent served the annexed  
 upon Kirschner & Greenberg attorney(s) for  
 Appellant Zuber in this action, at 10850 Wilshire Blvd., Los Angeles, Cal.

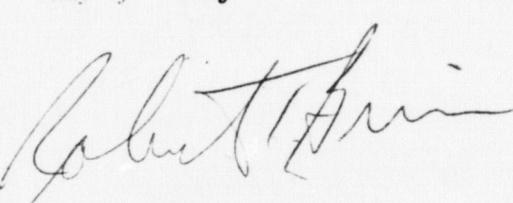
the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.

Sworn to before me, this 2d  
 day of July 19 75.



Eugene L. St. Louis  
 Print name beneath signature

EUGENE L. ST. LOUIS

  
 ROBERT T. BRIN  
 Notary Public, State of New York  
 No. 31-0418950  
 Qualified in New York County  
 Commission Expires March 30, 1977